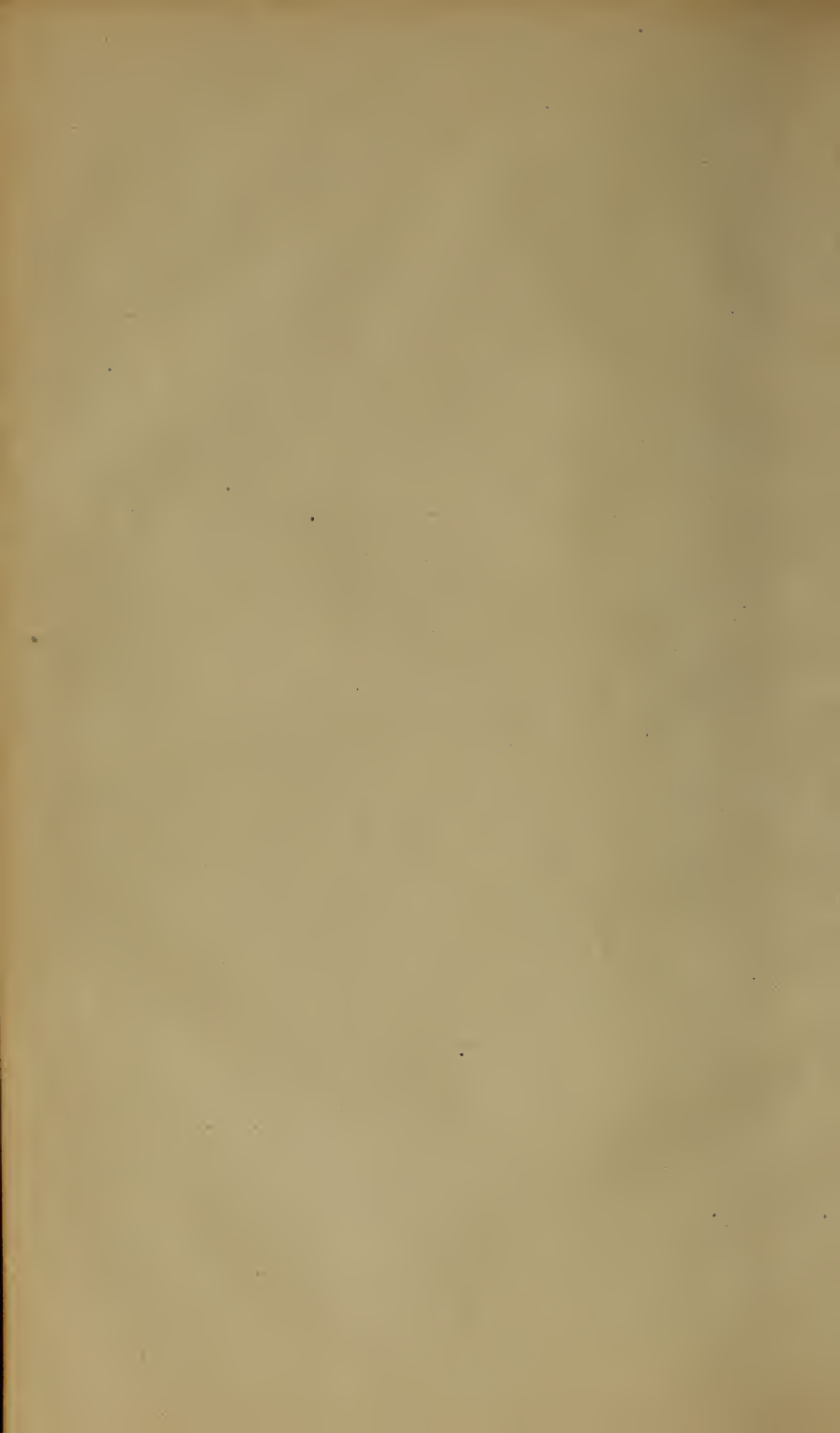
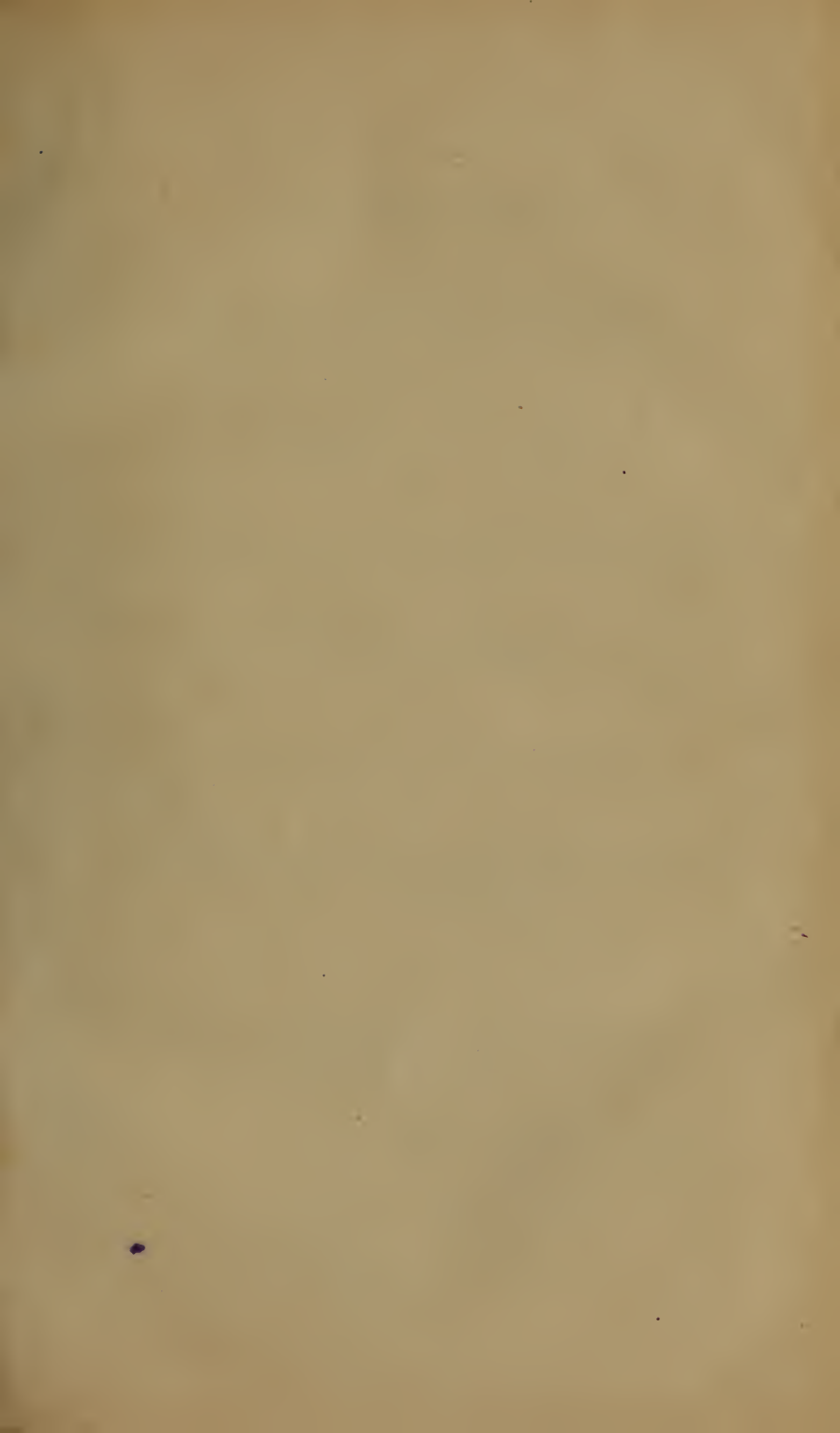


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UNITED STATES OF AMERICA.







AN
EXAMINATION
OF
THE CONTROVERSY BETWEEN
THE
GREEK DEPUTIES
AND
TWO MERCANTILE HOUSES OF NEW-YORK:
TOGETHER WITH
A REVIEW

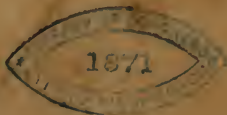
OF THE
PUBLICATIONS ON THE SUBJECT,
BY
THE ARBITRATORS, MESSRS. EMMET AND OGDEN, AND
MR. WILLIAM BAYARD.

BY
JOHN DUER AND ROBERT SEDGWICK.

NEW-YORK:

PRINTED BY J. SEYMOUR, JOHN-STREET.

1826.



IF 809
II

EXAMINATION, &c.

THE controversy in relation to the Greek Frigates has not assumed a greater importance in public opinion than it fairly deserves. It is not, however, from its probable effects, serious as they may be, on the reputation or fortunes of individuals, that it derives its interest with the community. Although personal feelings and animosities have become mixed in the discussion, to an extent that is much to be deplored, yet it is not personal in its nature, but involves considerations of a far more extensive import.

The representative of a foreign nation, placed in circumstances of unexampled difficulty and distress, has solemnly appealed to the justice of the American people ; and this appeal, if the facts on which it is rested be true, it seems to be universally felt must be answered. The character and honour, (it has been truly observed,) not merely of this city, but of the nation, are deeply concerned in the judgment that the public are called to pronounce. The transaction which is the subject of complaint, will be made known in every quarter of the civilized world ; and by the enemies of our free institutions, inferences the most injurious to our national character will be drawn and enforced. The stain on the honour of the nation will remain, and be fixed, unless it can be prevented or effaced by a very general and decisive expression of public opinion ; and if this be long delayed, the misconduct of a few individuals will be forgotten, and merged in the disgrace of our country.

We do not mean, and we trust we shall not be understood to mean, that to shield our national character from reproach,

the individuals accused are to be condemned against evidence, or without evidence: but we do mean, that no partiality we may entertain for those individuals as friends or fellow-citizens—no previous estimate we may have formed of their fairness and integrity—and no amiable, though in such a case, weak reluctance to wound their feelings,—should prevent us from examining the evidence that is adduced, with all the attention that its importance demands, and from pronouncing or concurring in the sentence that our consciences shall tell us it justifies and requires. This is a duty which every intelligent and virtuous man owes to the community in which he lives, and it devolves with a peculiar force on the conductors of the public press. If the Messrs. Bayard and Howland are indeed innocent of the serious charges that have been preferred against them, let all unite in proclaiming their innocence, and let the undivided weight of public odium and indignation fall upon their accusers—not only on Mr. Contostavlos, but on the “legal advisers under whose auspices and sanction” it is assumed his publication was made. We shrink not from the penalty: all that we ask is, that should the evidence, fairly examined, lead to and compel an opposite conclusion, the public verdict may be pronounced with equal emphasis, and equal unanimity.

All agree that the controversy, if possible, must be brought to a close. This can only be effected by an ample review of the various questions that have been discussed, and a clear statement of the evidence in relation to each. It is true there are some prominent facts that are not contested; but there are others very material to be understood—indispensably so—to guide us in our moral estimate of the transaction, that imperfect and contradictory statements have involved in doubt. There are dark recesses, on which the light of truth and evidence must be thrown. It is the whole case, so far as it has not been already fully disclosed, that we propose to exhibit. This task circumstances have imposed on us as a sacred duty. The counsel of Mr. Contostavlos are the friends “with whom he left the means of substantiating the truth of every material allegation that he had made, and of vindicating his character

against every calumny that the malice of his enemies might urge." By permitting him to make this declaration, we in effect accepted the trust that it implied: in conscience and honour we cannot shrink from its fulfilment.

Our preface may seem long; but in some further preliminary remarks we must be indulged.

We are very sensible of the painful nature of the discussion on which we are about to enter. In conducting it, we shall endeavour to express ourselves with all just respect towards the gentlemen who acted as arbitrators. Whatever they may now think, or be prevailed on to believe, our feelings towards them are very different from those of personal hostility. Of the injustice of their award, and of the very serious defects of their report, we must, indeed, speak—without passion, we hope, certainly without disguise—but we shall press no uncharitable inferences as to their motives; we have no desire that such should be drawn by others. We hold it base to insinuate what we would not assert.

It is matter of deep regret to us that this controversy has assumed any thing of a personal nature in regard to the arbitrators, or either of them. We desire to separate them from it, as far as is consistent with truth and justice. It is our anxious wish to detach their individual respectability and weight of character from all alliance with delinquency, which has no other refuge or protection. Certainly no gentlemen could have been selected, in whose purity of intention more entire confidence was to be reposed. By a long course of virtuous and honourable conduct, they had justly gained not merely the respect and esteem of their friends, but of the community. In the relations of private life, they are all of them most amiable and exemplary men. We make these concessions freely; we make them, we trust, with a due sense of the value of character, and of the weight to which it is entitled in this discussion; and we make them, we must be permitted to add, not so much in deference to public opinion, as in justice to our own feelings. We will go still farther in their behalf. We wish the public fully to understand and appreciate the delusive influences to which these gentlemen were subject, and by

which our experience of human nature must compel us to confess, the decisions even of honourable minds are sometimes swayed.

There were causes, constantly operating on the minds of the arbitrators, which deadened their moral feelings, and prevented the free exercise of their judgment. Their minds were pre-occupied with opinions and sympathies, of the extent and power of which they were not themselves aware, but which, in fact, rendered them incompetent to act as judges. They were indisposed, and very greatly indisposed, to believe the charges it was our duty to prefer; and consequently the evidence and arguments in support of them were not weighed and felt as they would have been weighed and felt by unbiassed men. The truth is, the cause ought not to have been heard in New-York. We shall be understood by reflecting men, when we say, that considering the nature of the controversy, and the situation of the parties accused, it was hardly probable it should be heard in this city with the requisite impartiality: at least the arbitrators themselves, and even the counsel for the Deputies, ought to have been strangers. When we reflect on the mistakes which, from a false confidence, we ourselves committed, we are confirmed in the belief that we were all of us subject to an influence very adverse to a thorough and vigilant discharge of our duty—an influence so interwoven with past recollections, and present opinions and feelings, that it acted on our minds almost with the secrecy and certainty of instinct. It was impossible to forget the long and established standing, the unblemished reputation, the extensive connexions, the numerous relatives and friends of those whose conduct we were called to investigate. We knew in what high estimation they were generally, if not universally held, and that charges affecting their mercantile honour would be listened to with extreme incredulity. It is not true that we conducted the inquiry in a spirit of jealous and angry crimination. Until the truth broke in on our minds, with an evidence not to be resisted—until we were in a manner forced to see,—our disposition was to conciliate, to soften—to accept of any plausible explanation that, without a sacrifice of the rights of

our clients, would save the integrity of the houses from reproach. The arbitrators yielded to an influence, from which we found it difficult to emancipate our own minds, and to the operation of which, from their far more intimate connexions with the houses and their immediate friends, they were much more exposed than ourselves. There are heights not only above the low atmosphere of selfish and interested feeling, but even above the region of friendship and gratitude, on which we must place ourselves when we seek to breathe a pure and invigorating air. These heights the arbitrators did not ascend. Of their feelings of extreme partiality towards the houses—their fixed disposition to view their conduct in the most favourable light—to excuse, defend, and justify them throughout,—the pamphlet of the arbitrators affords far more striking evidence even than their award. How very clear and decided are they in their opinions as to the propriety of allowing all the *contested* charges that were allowed ! In relation to them, they have no doubt or scruple. The \$80,000 (the 10 per cent.) are a very *reasonable* commission. Had not the houses been so emphatically the friends of *Greece*, they would doubtless have charged more ; and if they had, it seems quite certain that more would have been allowed—“ for the example in building ships for the government of Colombia is *in point*, and that would authorise a much heavier charge.” The \$50,000 paid to the ship-builders, “ for the immediate and exclusive devotion of their extensive ship-yards, and their skill and personal services,” notwithstanding the foolish clamour on the subject, is in truth less than these *disinterested mechanics ought to have received* ; “ for the evidence is, that they have rather lost than gained by their contract.” The \$11,500 obtained by Capt. Chauncey, is a sum hardly fit to be named, when compared with the “ *extraordinary value*” of his services, especially when we consider the “ sacrifice he made in retiring from the public service, and losing his pay and emoluments as a Captain in the navy ;” this palpable fact, that he gave up \$2,000 per ann. for the miserable equivalent of nearly \$12,000, is quite decisive. Thus, without the least hesitation, a faint or solitary expression of regret, more than

\$140,000 are transferred to the pockets of a few of our citizens, although it was well known that this sum formed a large proportion of the very last resources of a million of our fellow-beings, who were enduring every imaginable privation—sustaining the extremity of famine—exposing their lives, as if they had no value—and shedding their blood like water, to free themselves from the most degrading and galling chains to which the bodies and souls of men were ever subjected! *The only regret that the arbitrators do express is, that the claims of the houses could not be allowed in their full extent!* They were all, it seems, just and reasonable in themselves; the houses were very right to prefer them;—the Deputies, and we, as their counsel, ought in conscience to have allowed them; and upon technical grounds alone did we succeed in defeating them. These are not the words of the arbitrators, but such is the fair import of their language.

The arbitrators say they “felt the hardship of imposing on the Messrs. Howland the loss of the £7,500 sterling drawn from the Messrs. Ricardo, and deposited in the hands of Williams, and lost by his failure.” (Rep. p. 62.) That is, they felt the hardship of compelling the Messrs. Howland, *instead of the Deputies*, to sustain the loss of moneys placed by the Messrs. Howland in the hands of their own banker—not in the execution of their trust—not for any purpose connected with its execution—but with a view solely to their own convenience!—Of moneys drawn from the Ricardos, on the false allegation that they were required for immediate expenditure in this country, and permitted to remain in the hands of Williams for many months after they had been thus improperly obtained!—Of moneys deposited with their own banker in London, not only without the knowledge or consent of the Deputies, but against their expressed wishes!—Of moneys deposited under an actual agreement on the part of the Messrs. Howland with Gen. Lallemand, and that they would assume the risk!—Under all these circumstances, they felt the hardship of rejecting this claim, uninfluenced even by the additional fact, that in the judgment of General Lallemand, it had been *renounced* by the Messrs. Howland themselves many

months before the arbitration commenced; and that on the faith of such renunciation, a letter of credit was delivered to them, that would otherwise have been withheld! The arbitrators also rejected the claims for damages on the protested bills, not as a most unjustifiable and extortionate demand, but in compliance solely with "the rigid rules of law," in opposition, it is clearly implied, to the natural dictates of conscience. That is, they "felt bound, by the rigid rules of law" (Rep. p 62) alone, to reject a claim for pretended damages, to the extent of more than \$70,000, although not one cent of pecuniary loss was shown to have been sustained. And although the allegation that the credit of the houses had been, or could have been, affected by the protest of bills drawn by them, not on their own account, but as agents—not to be paid out of their own funds, but out of those of their principals—not sold, but remitted for collection,—was on its face impossible and absurd. All this is strange—it is astonishing;—it will appear so to all who breathe an atmosphere different from that in which the arbitrators lived and moved, when they made their award and prepared their report. Yet all this does not necessarily imply dishonesty. It may be—we are bound to believe it is—delusion.*

Having made these explanations, we shall commence our task by replying to some accusations which, if not directly

* We recommend to the attention of those who doubt the force of the preceding considerations, the following slightly altered passage, written by one whose deep knowledge of the human heart will be questioned by none who are acquainted with his writings. "We cannot be acquainted with, or in any propriety of speech be said to know any thing, but what we attend to. If, therefore, persons attend only to one side, they really will not, cannot see or know what is to be alleged on the other. Though a man hath the best eyes in the world, he cannot see any way but that which he turns them. Thus such persons, without passing over the least the most minute thing which can possibly be urged in favour of their own opinions, shall overlook entirely the plainest and most obvious things on the other side: and whilst they are under the power of this temper, thought and consideration upon the matter before them has scarcely any tendency to set them right; because they are engaged, and their deliberation concerning an act to be done, or reflection upon it afterwards, is not to see whether it be right, but to find out reasons to justify or palliate it"

asserted, are by no means obscurely intimated, and which are calculated to be the more injurious, from the artful and covert manner in which they are expressed. That the charges to which we refer, are meant to apply as well to the legal advisers of Mr. Contostavlos as to himself, cannot be doubted, and probably will not be denied. It is true, that with the substantial merits of the controversy these charges have little to do; but they have much to do with the agency that has been attributed to us in producing or exciting it.

“A sense of duty and propriety,” it seems, ought to have restrained us from “giving publicity to the prominent facts relating to the enterprise of building the frigates”—consequently from advising or countenancing such publication. We have shown ourselves entirely regardless “of those delicate considerations which, as dutiful citizens, we owe to the United States, and which forbid a wanton and unnecessary exposure of any facts, to induce a belief that our government has connived at an enterprise forbidden by the laws of our country, and in violation of our national neutrality.” (Rep. p. 1, 2.) Such conduct towards the general government, is as “ungrateful” as “it is indelicate;” and if, from “feelings of benevolence and sympathy, it has lent itself to the succour of the Greeks, it must view with dissatisfaction and disgust the *requital it has received*.*” On this subject we are willing to take our share of responsibility. The “Narrative” of Mr. Contostavlos was not written in consequence of our advice, but certainly with our sanction.† On full consideration we approved of the motives that led him to prepare it, and direct its publication: and to all who will reflect on the nature of Mr. Contostavlos’ mission, and on the duties he owed to his country, the Deputies, and himself, the propriety of his determination will be sufficiently obvious. The funds transmitted to this country for the building of the frigates, were the produce of a loan obtained in England, principally, it is believed, through the

* Letter of Messrs. Emmet and Ogden, p. 42, Bayard’s pamphlet.

† The feelings which are mingled with the narrative of Mr. Contostavlos, and the tone in which they are uttered must be considered as his own. It is to be understood that we gave our sanction to his statement of facts.

intervention of the Greek Committee in London. The subscribers to this loan were in no equivocal sense the friends of Greece—for on the contingency of her independence they hazarded all they advanced. By the proper application of these funds, it was thought this object might be effected; and it was heretofore certain that their expenditure would be watched with the utmost jealousy and vigilance. It was known that a rigid, and, as is the practice in England, a public account would be demanded of every agent into whose hands any portion of a capital so sacred, and so difficult to be replaced, should be entrusted. Of this the houses themselves were fully apprised, even before the arrival of Mr. Contostavlos. In a letter addressed to them by the Messrs. Ricardo, dated the 14th December, 1825, we find the following passage:—"As contractors for the Greek loan, which has terminated so unfortunately to ourselves, our friends, and the public, we may be called upon to give an account of how the funds have been disposed of for the building of two frigates in America. So enormous a sum as £155,000, will be considered as a most extraordinary item. We must therefore request of you to give us the fullest explanation on the subject, as we rely on the respectability of your house to prove to the satisfaction of the public here, that there has been no unnecessary extravagance." It cannot, therefore, be a matter of surprise that Mr. Contostavlos had a deep sense of his personal responsibility in the execution of his difficult trust. It was his fixed determination, whatever might be the result of his efforts, that his own reputation should not perish in the possible wreck of the hopes of his country. Before the arbitration closed, he had resolved to make the transaction, and the proceedings before the arbitrators, public in all their details. Nor were the arbitrators ignorant that such were his intentions: the fact was explicitly announced to them by both the counsel, who addressed them at the close of the evidence in behalf of the Deputies. It is manifest that the motives to this resolution were much strengthened by the award itself, and by subsequent occurrences, especially by the refusal of the houses to furnish their bills of parcels, and that of the

arbitrators, to state the reasons of their award. It was easy to foresee the censures and the clamour that would be provoked by the *unexplained* fact, that a single frigate had been obtained in exchange for £155,000 sterling; and that the acquiescence and silence of the Deputies and their representative, would have no other effect than to involve them in the suspicion of having shared in the profits of a most disgraceful job. A publication, therefore, of the material facts in England or in this country, was inevitable. The Deputies, the Messrs. Ricardo, and Mr. Contostavlos, could not suppress them without consenting to their own dishonour. For many reasons, we preferred that the publication should first be made here. We therefore deliberately approved of Mr. Contostavlos' appeal to the American people, not only as the most effectual means of vindication that he could adopt, but as not unlikely to result in obtaining for his country that aid on which she had relied, and of which, in our serious judgment, she had been most unjustly deprived. It is not true, therefore, that the exposure of facts made by Mr. Contostavlos was "wanton and unnecessary," even had it led to the impression or belief that the general government had connived at an enterprise known to be illegal. Yet it so happens, that on this part of the case the vindication of Mr. Contostavlos is, if possible, still more complete. He has not been guilty of that indelicacy and ingratitude towards the general government, which is so gratuitously imputed to him. His "Narrative" does not contain a sentence, line or phrase, from which it can be fairly inferred that the government had lent its sanction or countenance to an enterprise "forbidden by the laws, and in violation of our national neutrality." It nowhere appears that it was disclosed to the government, supposing for the moment that there is no distinction between an act of the President and an act of Congress, that the Messrs. Bayard and Howland were building the frigates out of funds supplied to them by the Deputies in London, and for the use and as the property of the Greek government. It may, indeed, have been known that the vessels were finally destined for the service of Greece: but this fact by no means implies

the illegality of "the enterprise." There is no law to prohibit an American citizen from building and fitting out vessels of war on his own account, although with the expectation and intent of selling them to a foreign government engaged in war. For aught that it would appear, was known to the government the houses were building the frigates for Greece, in the same manner that Mr. Eckford has been for years openly engaged in building frigates for Colombia.

But while Mr. Contostavlos is thus innocent of the charge imputed to him, it is not so easy to acquit the arbitrators themselves: whilst they assume towards others such a lofty tone of political morality, it is not a little extraordinary that they should themselves have been guilty of the "indelicacy and indiscretion" which they affect to reprehend. They, it seems,* "felt the full force of the delicate considerations which, as dutiful citizens, they owe to the United States." To such an extent indeed did these sentiments influence their conduct, (such at least is the ingenious supposition of Messrs. Emmet and Ogden) that they alone† caused the omission from their faithful report of the evidence, of the important letter of the 15th of April—that is, caused the omission of the document on which the right of the Deputies to rescind the contract was placed—"the cardinal point,"‡ on which (according to the arbitrators) "the counsel for the Deputies relied." We readily admit, that delicacy towards the general government could not well be carried further than to induce the suppression of the most material fact in the whole controversy.

Yet we lament to say, in spite of all these professions and excuses, it is the arbitrators themselves and their candid apologists, who have been the first to accuse the general government. It is they who have chosen to intimate, that before the building of the frigates was commenced, the nature and object of the enterprise were made known to the government, and assurances obtained, that in relation to these vessels the laws of the country should not be enforced. The language, we ad-

* Rep. p. 1.

† Letter of Messrs. Emmett and Ogden, Bayard's Expos. p. 42.

‡ Rep. p. 50.

mit, is cautious, but is it possible to mistake the meaning? We subjoin the passages to which we chiefly refer, and instead of reasoning as to their import, we put ourselves on the answers of every candid man to the questions,—“What is the impression that you believe was intended to be made? What are the facts that you understand, to be covertly asserted?”

“We think it not a forced construction to infer from the language and spirit of that article, (the additional article of instructions) that the Deputies meant that the agents here should ascertain unequivocally that our government would refrain from any exertion of authority, and secretly favour the enterprise. Whether the agents did unequivocally ascertain this disposition in the government? whether the operation has met no opposition from the government or laws of the United States?” and whether the ‘Hellas’ has been “permitted to sail and enrol her men?” are delicate questions; and we deem it unnecessary to discuss or weigh the evidence on those points. The duty of these houses and General Lallemand, in relation to our government, required great circumspection, fidelity and address.”—*Report*, p. 50, 1.

“We are of opinion that the usage thus proved, does not govern this case; because the agency of these houses was not within the ordinary range of commercial transactions, to which that usage applies. Here was a special confidence of a *political* as well as *commercial* character. The houses, with General Lallemand, were, in fact, diplomatic agents in a very difficult and delicate affair with our government. Whether that part of their agency has been discreetly and successfully accomplished, and whether they have procured the favour of the government in the manner contemplated in their instructions, is a point on which we express no opinion.”—*Report*, p. 52, 3.

Letter from Messrs. Emmet and Ogden. Bayard’s pamphlet, page 42.

“On this topic of illegality we must further say, we think

“ the general government has been treated with very little delicacy or discretion, and if it did any thing to favour the views of the Greeks, with some ingratitude. Efforts are made to goad the houses, from motives of self-defence, into the disclosure of confidential transactions, if any such ever did take place. How they are to defend themselves, it is not for us to say; but it may well be, that they must contend on unequal terms, if they do not disregard the injunctions of prudence and honour.”

Mr. William Bayard, in his “ Exposition,” has thrown off all disguise. The facts which the arbitrators and his counsel have intimated, we understand him distinctly to assert.* It is therefore the adversaries of Mr. Contostavlos who have charged the general government “ with having connived at an enterprise forbidden by the laws, and in violation of our national neutrality.”

But it will be said, that these “ disclosures” have been provoked. The arbitrators and the houses have been absolutely “ goaded” to make them in self-defence; “ and if the injunctions of prudence and honour have been disregarded,” it is upon Mr. Contostavlos and his advisers that the indignation of the government and of the country ought to fall. It was essential to the vindication of the arbitrators that they should distinguish the building of these frigates from ordinary mercantile operations, since otherwise the principal reason that they have assigned for disregarding the evidence of mercantile usage, on the subject of commissions, would have entirely failed. It was necessary that the arbitrators should clothe the houses and General Lallemand with the imposing character of “ diplomatic agents in a very delicate and difficult affair with our government,” since otherwise they could not have dwelt on the great circumspection, “ fidelity, and address” with which they discharged this important trust. If we consider the houses only as merchants, it is true their commissions must appear extravagant; but if we regard them in their true

character of "diplomatic agents," what limit shall be placed to their merits and their demands? To the defence of the houses these disclosures were still more necessary. They could not otherwise have defended themselves against the charge of having violated their instructions, and deceived the Deputies by false assurances of the entire safety of the operation committed to them. Against this very serious charge it is their sufficient and sole defence, that they had ascertained, in the most unequivocal manner, that the existing laws would not be carried into execution.

To all this our reply shall be brief and decisive. If the facts insinuated or asserted as to the connivance of the general government, and the assurances given by them of secret protection, *were true*, and such evidence was given to the arbitrators, then the justification of the arbitrators and of the houses for having published those facts would be complete, and upon Mr. Contostavlos and his legal advisers the blame of having provoked the disclosure ought to rest: *but of these important facts no evidence whatever was given before the arbitrators, and we have no belief in their existence.* This subject the reader must see is most important—it touches the very vitals of the controversy: we must, therefore, be distinctly understood. We shall leave no room for evasion or subterfuge in others, or for charging us with the "subtle refinements and astute reasoning" to which it seems to have been predicted we should have recourse.

The counsel for the Deputies charged the houses with having grossly failed in their duty as agents, by subjecting, *contrary to their instructions*, the immense property intrusted to them to the peril of forfeiture, whilst at the same time they deceived the Deputies by false assurances of its entire safety. We hope this is plain and intelligible. This is the charge. The arbitrators, in behalf of the houses and in their own defence, reply—the charge is not true. The houses did not fail in their duty as agents, or deceive their employers. They did not violate, but fulfilled their instructions according to their language and spirit. "All that the Deputies meant was, that the agents here should ascertain, unequivocally, that our gov-

ernment would refrain from any exertion of authority, and secretly favour the enterprise ;” and they then proceed to say,—(for unless they mean this, the charge is unanswered—unless they mean this, they mean nothing),—that the agents did ascertain unequivocally that such was the disposition, and would be the conduct of the government. If the arbitrators have rightly construed the instructions of the Deputies, and if the houses did obtain such assurances as is alleged, we admit that the charge of breach of duty and of deception is repelled. We say nothing at present of the construction which the arbitrators adopt ; but we call upon them to show that any evidence was given to them of the truth of the facts which they assume. They say that they deem it unnecessary “ to weigh and discuss that evidence.” We deny its existence. We call upon them to show that there was any evidence of any communication whatever between the houses and the government, on the subject of the intended building and equipping of the frigates. We call upon them to show how, in what manner, when, where, from whom, it “ was unequivocally ascertained that the government would refrain from any exercise of authority, and secretly favour the enterprise.” This they say the Deputies meant should be done ; this the agents, they admit, were bound to do. If this were not done, then the charge that these agents violated their instructions and deceived their employers, remains in full force. Prove then, that this was done. After all that has been said, it is idle to speak “ of the delicate considerations which dutiful citizens owe to the United States.” The language, it must be confessed, is grave and plausible ; but there are none whom it can now deceive. The fact, that the general government connived at an enterprise it knew to be illegal, and gave assurances of secret protection, is asserted. It is worse than affectation to pretend any scruples about producing the evidence to show its truth. It is a novel species of delicacy, which we suspect neither the government nor the public will be able to understand or appreciate, that is bold and unscrupulous in accusing, timid and sensitive only when proof is demanded.

But it will be said, that the proof we demand has been already given to the public. If—(we must be pardoned the use of the *ominous* conjunction)—if Mr. William Bayard is to be credited, “General Lallemand,” before the celebrated letter of the 15th April was written, “addressed himself to higher sources of information; and, by personal inquiries, ascertained to his entire satisfaction, that the operation about to be undertaken would meet no opposition from the government or laws of the United States.” By “higher sources of information,” we must understand the President and his cabinet, since, by no authority inferior to that of the executive, could such assurances be given. “On his return to New-York,” General Lallemand communicated his information to the houses, when they all, it seems, became “equally satisfied.” So far as we are concerned to repel the charge of having “provoked” this extraordinary disclosure, it is sufficient to say, that no evidence of the facts it embraces was given to the arbitrators; that Mr. Contostavlos and his counsel had no suspicion of their existence, and could not, therefore, anticipate their publication. How far the statement of Mr. Bayard affects the merits of the controversy, will be hereafter seen.

There remain other very serious charges, and which we cannot but see are meant to affect us personally, to which we must advert. Messrs. Emmet and Ogden, in their letter to the arbitrators, say that the compromise of the suit in Equity, under which a large sum was obtained from the houses, was represented to them “as made under a solemn agreement that all disputes and angry discussions were to cease;” and in a subsequent paragraph they add, that “recent publications show that the conciliatory assurances under which the arrangement was made, are to be disregarded, after the fruits of them have been obtained and carried away.”

The “recent publications” to which the counsel refer, can only mean the letters addressed by us to Mr. Henry D. Sedgwick, and prefixed to his “Refutation.” And it is wished that the public should understand that by us, or with our consent and knowledge, the “conciliatory assurances” of which they speak were made, and by us, “after their fruits have

been obtained, are to be disregarded." We feel no gratitude to the gentlemen for the apparent reserve with which they express themselves. We should have been better satisfied had they charged us in plain terms, and by name, with the very dishonourable conduct which it is their intention to impute. We are no friends to the enigmas which cunning frames to the public, that malignity may expound them in secret. The counsel disclaim all wish to "receive or retort asperities," and lament that such have ever been uttered; whilst in the same breath they accuse us of obtaining, by "false pretences," a large sum of money, which neither in law nor conscience were their clients bound to pay! Yet it is not, perhaps, without an adequate motive that this meek, pacific, forgiving tone is assumed. It is thus that insinuation plumes its most fatal arrows. They are scarcely seen as they fly; the wound is hardly felt when it is received. But the treacherous missile has been dipped in poison; and it is hoped that the victim shall pine and perish under a disease, of the cause of which he is to remain unconscious.

It is true that Messrs Emmet and Ogden disclaim all personal knowledge of the facts that occurred when the compromise was made. They took no part in the negotiation, and it was concluded, it seems, against their wishes and advice. But they express no distrust of the representations that they tell us were made to them. On the contrary, they mean it to be understood that they believed them to be strictly accurate; and by this expression of their own confidence, they expected to secure that of the public. We have a right to complain, and we do complain, that these gentlemen have thus chosen to lend the sanction of their names to the assertions of their clients, without ascertaining, by previous inquiry from us, how far we admitted those assertions to be true. It seems to us, for obvious reasons, that they were bound to pursue this course. They have, however, judged differently. In preference to seeking an explanation from us, they have chosen to repose an implicit faith in their own clients. Undeceived and unwarned by all that has occurred, they have chosen to publish to the world the facts which they thus received, careless

of the effect to be produced on the reputation of men, of whose integrity and honour, in a long course of professional acquaintance, they never had reason to doubt. We must, indeed, express our surprise, but shall leave the gentlemen, without regret, to abide by their election. We proceed briefly to the facts. The terms of the compromise were finally settled in conferences between Mr. Henry D. Sedgwick and a gentleman intimately connected with one of the houses, but whose name is withheld, from motives of delicacy towards himself. Before Mr. Sedgwick printed his "Vindication," he deemed it his duty to ascertain how far his intended publication would be deemed by this gentleman a violation of any engagement, express or implied, subsisting between them. He addressed a letter to him on the subject, offering, at the same time, the perusal of what he had written, and meant to publish. The reply was prompt and explicit; and we give an extract from the letter now before us, omitting only those parts that have no relation to the point we are considering.

"September 5.

"MY DEAR SIR,—I did not consider you restrained by an
 "engagement with me, from publishing an address to the
 "public on the subject of the recent controversy; nor should
 "I be willing to have the matter of such address communi-
 "cated to me before publication. You are aware of the deli-
 "cacy of my situation, and of the expediency of my declining
 "all connexion with the angry discussion that your appeal
 "may provoke. Truly yours, &c."

If no engagement were made to bind Mr. Sedgwick, it will hardly be pretended or supposed that any was made by him on behalf of his associate counsel or Mr. Contostavlos. If it be meant, or has been asserted, that at any other time during the negotiation, or with any other person, an agreement was made, or assurances given by Mr. Contostavlos, or either of the counsel, that the transaction that had been the subject of controversy should not be made known to the public, we solemnly declare that such assertions are untrue.

So far we trust that our explanations have been satisfactory.* We shall now proceed to examine a very grave accusation. In this discussion, we shall pass from topics merely personal, to some of the merits of the controversy. The transition will not be more refreshing to our readers than to ourselves.

It is known to the public, that when the arbitrators delivered their award, Mr. Contostavlos and his counsel were greatly dissatisfied with the result; and, after a short interval, made known to the arbitrators their determination not to comply with the decree that had been pronounced.†

* It may occur to some readers as a circumstance not unimportant, that Mr. Bayard, in his "Exposition," has nowhere asserted or intimated the existence of the agreement to which the counsel have referred, with a view of giving currency to a charge of its dishonourable violation. We can lay no stress on this omission as a proof of the non-existence of the facts: but the author of the pamphlet doubtless foresaw what the counsel had strangely overlooked—the necessary effect of such a statement on the houses themselves. Guilt may well seek concealment; but was silence ever purchased by innocence? and this too, by men not careless of money, at an expense of \$24,000? Yet this has been said of the Messrs. Bayard and Howland, by their own counsel.

† *Report*, p. 42–44. We request the reader to peruse with attention, the correspondence published in the pages to which we refer, particularly with a view to the singular grounds on which the arbitrators place their refusal to furnish to Mr. Contostavlos a statement of the reasons of their award. The letter of the arbitrators, of the 29th July, contains this sentence: "Whenever the *award shall be carried into effect*, we shall not decline to give our reasons, and especially to Mr. Contostavlos." In reference to this, Mr. C. remarked to us—"This certainly is not the kind of justice that I expected in America, although it very much resembles that which is frequently dealt to my countrymen in Constantinople. When it is deemed expedient to apply the wealth of a Greek merchant to public uses, the unfortunate man whose effects are to be confiscated, is seized by the order of the Porte, and instantly, without any explanation of the causes of his arrest, or any opportunity of defence, hurried to execution. But when the award of the Sultan 'has been carried into effect'—when the victim has been decapitated, and his head fixed on the walls of the Seraglio,—then it is that Turkish justice displays itself. To the head thus exposed a paper is carefully affixed, stating at length the reasons of the execution, and justifying its necessity."

After reflecting with great anxiety, it will be readily believed, on the course it was our duty to pursue, we resolved to file a bill in the Equity Court of this Circuit, with a view to set aside the award, and procure a settlement of the accounts on the known principles of the court to which we appealed. Judge Edwards, after a very careful consideration of the subject, granted an injunction according to the prayer of the bill, restraining the arbitrators from acting further in the execution of their trust, and especially from selling the vessels, or either of them, as they had already announced was their intention. As Judge Edwards, when we applied to him, was about to leave the city, and expected to be absent for some weeks, he very properly made it a condition of granting the injunction, that the defendants should be at liberty to apply to the Chancellor for its dissolution, either upon the bill itself, or upon putting in their answers. To this condition we readily assented. Indeed our impression is, that by one of us this course was suggested.

We avow, not, we hope, in pride, but certainly not with shame or regret, that our great object in filing this bill, was to *compel* the houses to abate from the amount awarded to them, a sufficient sum to enable Mr. Contostavlos to complete the equipment of the Hope, and despatch her, with as little delay as possible, to the service of his country. In this design, however, it was impossible for us to succeed, unless the objections to the validity of the award set forth in the bill were satisfactory and conclusive, and unless it were out of the power of the defendants—that is, the arbitrators and the houses—to contradict, under oath, the material facts on which these objections were founded. It was essential to our success, that we should be enabled to continue the prohibition to sell the vessels. A sale made by the arbitrators, especially at auction, as they contemplated, instead of securing to Greece the aid of one of the frigates, would probably have involved the sacrifice of both. In our judgment, it would also have led to the ultimate loss of the whole of the immense funds which the Deputies had remitted. Without impeaching the credit or stability of the houses, we may surely say, that if the security of the

vessels were lost to us, we had no reliance on their personal ability to restore to our clients the 750,000 dollars which they had received. A decree for this enormous amount, would probably have been less available to Greece even than her depreciated stock. The reader must therefore see, that if the defendants could have procured a dissolution of the injunction, our object would have been defeated, and they would have compelled us to perform the award without change, or deduction. We could have done nothing else; and the public will perfectly understand the true motives of the compromise of which we are now to speak, when we inform them, that if the *award had been valid and binding on the parties*, the dissolution of the injunction within a short period was easy and certain. If, in the judgment of the Chancellor, the objections of our bill to the award were groundless; or if they had appeared so from the statement of the arbitrators, under oath, (which, in this state of the cause, we should not have been permitted to question,) the injunction would have been dissolved within a fortnight from the time our bill was filed; the houses would have been saved from the necessity of paying what they did pay in compliance with our demands; and we should have had no refuge, but in obeying unconditionally the terms of the award. In our expectations, however, as to the event of our proceedings, we were not disappointed. The bill and the injunction answered the purpose they were meant to fulfil. Within a few days, a negotiation for a compromise was opened. We meant to use, but not to abuse, the power that we were conscious we possessed. We insisted that the mistakes apparent on the face of the accounts delivered by the arbitrators, should be corrected, and that the charges allowed without authority, or without evidence, should be deducted; but we at the same time offered to abide by the award on all the points to which, by any reasonable interpretation, the powers of the arbitrators could be construed to extend. Some difficulties and delay intervened; but each of the houses finally agreed to deduct \$12,000 from the sum awarded to them—making in the aggregate, about the sum that we demanded, immediately after the injunction, as the condition of a

settlement. The impression which this statement, when clearly made, must produce on the public mind, has been distinctly perceived by the arbitrators, the counsel of the houses, and the sagacious author of the "Exposition." They have all foreseen that every intelligent man would be led to exclaim,—“Certainly the houses would not have consented to the sacrifice they made, from any other motive than a conviction that the award was illegal, and impossible to be sustained.” Much anxiety is evinced to guard against this inference, and various explanations are given different from that which we have suggested. The possibility that the arbitrators had erred, was not to be admitted; and to protect their infallibility, it is deemed expedient to impute to Mr. Contostavlos and his advisers, a very base and dishonourable proceeding. The award, it seems, could not have been shaken, and it was sought to be impeached on weak and frivolous pretexts. We had no colour of right to the moneys that we demanded; and the large sum that we obtained, was yielded not to a sense of justice, but to extortion, artifice, or *compassion*. The houses were alarmed by the terrors of forfeiture, or the prospect of a long and vexatious litigation; or they relieved us from a new impulse of those benevolent feelings towards the Greeks, of which their conduct and correspondence have afforded throughout so consistent an exhibition. We must begin by acquitting Mr. Contostavlos from any share of the blame of this transaction, if blame it merits. No portion of it ought to rest on him: he placed himself in our hands, and was guided implicitly by our advice. If “good faith” were violated by the effort to set aside the award, it was violated by us. If the moneys we received were obtained by terror or artifice, we, and we alone, were guilty of the extortion or the fraud. A statement of the grounds on which we denied the validity of the award, will be our sufficient justification. But before we proceed to this, we must call the attention of our readers to the manner in which the arbitrators, the counsel of the houses, and Mr. William Bayard, in succession, have explained the motives by which the houses were induced to make the compromise in question. These explanations deserve attention: they are all

ingenious ; it is only to be lamented that they are utterly inconsistent. The arbitrators say,* that “the bill in Equity was “a notice on record and upon oath, that the ships and their “armament were liable to seizure and forfeiture, and was a “flagrant provocation to the officers of the government to “enforce the law, and an open and undisguised temptation to “the cupidity of common informers, who, by law, would be “entitled to one half the value of the ships,” &c. And they add—“Under these circumstances they were induced to make “a sacrifice of \$12,000 each, in order to secure the residue “of their demands under the award.” Our legal readers will smile at the *new publicity* given to the transaction, by the filing of a bill in the clerk’s office of the Court of Equity—a proceeding, of which the knowledge is usually confined to the officers of the court, the parties themselves, and their respective counsel. This was to proclaim openly a transaction, of which the prominent facts involving its illegality had been for weeks as well known in Wall-street, the centre of news and curiosity, as any of the mercantile occurrences of the day.† We intreat the very serious attention of the reader to the explanation here given by the arbitrators. The houses, it seems, were induced to make the sacrifice of \$12,000 each, in order to prevent the loss of the residue of their demands under the award, by the seizure and forfeiture to which, in the judgment of the arbitrators, the ships, armament, &c. were then certainly liable. No admission could well be more fatal as it respects the merchants—none more unfortunate as it respects the arbitrators themselves. The most serious charge—and even at the hazard of wearying our readers, it is a subject to which we must again and again recur—the most serious charge against the houses is, that in violation of the plain sense of their instructions, they had jeopardized the immense property entrusted to their honour; and had not

* Report, p. 46.

† Who was ignorant that the vessels were building for Greece, and that the houses had charged 10 per cent. commission? These two facts were alone sufficient to prove the illegality.

only withheld from the Deputies all knowledge of the peril to which their funds were exposed, but had lulled them into confidence by assurances of their safety. Against this charge the defence is, that the information and security which the Deputies required were practical, not theoretical. They had no desire to know—it was not necessary that they should know—what laws were to be found in the statute book, provided they were rendered certain that the existing laws would not be enforced. This is the security which they contemplated; and this security, it is added, was provided by the “diplomatic skill and address” with which the houses and General Lallemand had obtained the favour and protection of the government. This is the defence which the arbitrators adopt, which Messrs. Emmet and Ogden labour to enforce, and on which Mr. Bayard finally rests. Yet the arbitrators now tell us that the houses made a sacrifice of \$12,000 each, to avoid the risk of a seizure by the officers of that very government, of whose intention to refrain from *any exertion of authority they had received most unequivocal assurances*. Nor is this all. They add, that “an open and undisguised temptation was held out to the cupidity of common informers:” so that the fact is at last confessed, that even the favour of the government, had it been obtained, could not have availed to protect us, since it was in the power of a common informer to enforce the penalties of the law, not only without the intervention of the government, but even in opposition to its wishes! What, we now ask, has become of the security which the Deputies required, and which, it is confessed by all, the houses were bound to furnish? And how are we to reconcile with these admitted facts, the grave assurance of the arbitrators, that the houses had complied with their instructions in their language and in their spirit?*

* See Post, the additional letter of instructions, and the letter from the houses to the Deputies. It is lamentable to be compelled to reason about the meaning of these documents. No man of common sense can doubt that the Deputies mean to say, “You must not place our property in jeopardy;” and the houses to reply, “We will not; there is no danger.” Yet it is they who labour to explain away this obvious meaning; who charge others with “subtle refinements” and “astute reasoning.”

It was impossible for Messrs. Emmet and Ogden to adopt that explanation of the compromise which the arbitrators have given. They had contended on the hearing, and it was a main object of their letter to maintain the same doctrine, that the operation of building the frigates, so far as it had proceeded, was not illegal, and that neither the ships, armaments, nor any of the materials and stores, were liable to forfeiture. The penalties of a statute, carefully framed to maintain our neutral relations, according to the counsel, do not attach on a vessel built with the intent of being employed in hostilities with a power with whom the United States are at peace, until she is in all respects furnished, fitted out, equipped, and ready for sea; and even then these penalties are always to be avoided by the easy process of giving to the armament the appellation of "cargo;"—the only act, it seems, which the laws of our country require to preserve its neutrality. Entertaining these opinions which it appears were also those of their clients, the counsel could not allege that the houses had submitted to the compromise from any apprehension of the seizure of the ships, and were therefore driven to assign some other motive for the "sacrifice," to which they "consented." We cannot compliment them on the prudence of their choice. We applied, it seems, to the compassion of the houses, and worked upon their generous and benevolent feelings, by representing that the monies we required were indispensable to the complete equipment of the *Hope*—that without the aid we solicited she could not be dispatched to Greece, and that the houses, yielding to their zeal in the cause of humanity and freedom granted our prayer!! This explanation of his counsel, Mr. William Bayard has not deemed it prudent to adopt. There were difficulties he was aware in this friendly statement, which the public would not fail to perceive. The hypothesis was bold but hardly credible, and not easy to be reconciled with phenomena already known and observed. Mr. Bayard felt it would be ludicrous to speak of the "generosity" of those who had exhibited the accounts which Mr. Contostavlos had published, and who had persisted in claims to the amount of more than \$100,000, which, if allow-

ed, the sacrifice and loss to Greece of both the frigates was the inevitable consequence. Nor is this all. Mr. Bayard had other reasons (of which his counsel were not probably aware) for declining all mention of generosity. During the negotiation the Messrs. Bayard and Howland were very naturally anxious to give to the compulsory deduction on which we insisted, the form and appearance of a gratuity. The houses offered to open a subscription in behalf of the Greeks, and to head it with a donation of \$10,000 from each house. We did not choose to accept as a bounty what we claimed as a right, and we could not be accessory to a delusion on the public. Rejecting, therefore, the aid both of the arbitrators and his counsel, Mr. Bayard contents himself with saying that Mr. Contostavlos "extorted the sum of \$24,000 as the price on which he would forego his opposition, and release them (i. e. the houses) from a vexatious and protracted litigation in chancery." To which we reply, as we have already shown, that *if the award could have been supported by the oath of the arbitrators*, this "vexatious and protracted litigation" must have terminated within a few weeks.

We proceed more directly to answer the charge of having committed a gross violation of good faith by our refusal to submit to the decision of the arbitrators. We do not deny that good faith required that Mr. Contostavlos and his counsel should abide by the agreement that was made; and if the arbitrators acted fairly and within the scope of their powers, we were certainly bound to comply with their award; if otherwise, it was not merely our right, but, under the circumstances, our duty, to seek the redress that we obtained.

Our defence is, that the arbitrators *did* abuse and *did* exceed their powers. We shall select a few of the prominent objections to the award as exhibited in Mr. Contostavlos' bill, and shall submit them, with very little comment, to the judgment of the profession, and all intelligent men. On this subject there is fortunately no mystery in the law; but its rules are consonant to those of reason and common sense. Every thinking man, who has just notions of morality, will be able to determine for himself on the probable truth of the assertion,

“that the award of the arbitrators could not have been shak-
 “ken.” There are some positions of such revolting absurdity,
 that even the highest authority is insufficient to impose them
 on public belief. Our readers shall be enabled to judge
 whether the assertion, that the award was valid, is not fairly
 to be numbered in this class.

It appeared by a comparison of the receipts produced, with
 the corresponding items in the accounts of the houses, that large
 balances were included in these accounts which were still due
 to various individuals who had furnished supplies for the
 ships. These balances amounted to more than forty thou-
 sand dollars, and for the payment of them, the ships them-
 selves were probably bound. We might have insisted,
 this cannot be doubted—nor was it indeed denied—that
 these outstanding claims should be deducted from the ac-
 counts, and by so doing we should have saved the mercantile
 commissions of the houses. We however consented that the
 arbitrators should have the right to include these balances in
 the accounts of the houses, on condition that the receipts in full
 of the persons to whom they were due, should be produced
 before the award was made. To this condition the houses as-
 sented; they engaged to produce the receipts; and the ar-
 bitrators, *on their part, expressly agreed to provide that the mo-
 neys should not be paid over to the houses until these necessary
 vouchers were produced.** No trace of this agreement ap-
 pears in the report of the arbitrators; but to the fact that it
 was *made*, openly and positively made, we pledge our per-
 sonal veracity. The award of the arbitrators shows that by
 them the agreement was forgotten or disregarded. They di-
 rect the immediate payment to the houses of sums they award-
 ed to be due, without any exception of unsatisfied balances;
 and they tender to the Deputies the personal indemnity of
 the houses against the outstanding claims on the ships, in-
 stead of providing for their actual extinction, as we had required,
 and as had been solemnly promised.* This personal guaran-

* See Mr. Contostavlos' Narrative, p. 74.; whose statement on this
 subject has not been denied by the arbitrators in their report.

ty of the houses was not the security which the counsel of the deputies had demanded. It was a security which for many reasons we were extremely unwilling to accept, and which the arbitrators had no right, nor the shadow of a right, to compel the deputies to take ; we believed that this was a very improper exercise of the power of the arbitrators, and considered it a fatal objection to their award.

2d. It was insisted on the part of the deputies, that they were entitled to interest on the large balances which remained unexpended in the hands of the houses from the commencement until nearly the close of the operation ; and the claim was in itself so just and reasonable that it could not well be denied. In principle it was admitted by the arbitrators, but they in a great measure deprived us of the benefit of their admission by the gross mistakes which they suffered to infect their calculations. These mistakes are apparent on the face of the accounts delivered with the award. The arbitrators erroneously, and very erroneously, assumed the 28th of November as a common epoch from which they allowed interest to the *houses* on the disbursements, and they included in those disbursements *the commissions of the houses*, thus swelling the amount to more than \$80,000 beyond the sum actually expended. This was not only contrary to mercantile usage, but no such claim had been advanced by the houses or the counsel ; no such item is found in the interest accounts stated and exhibited in behalf of the houses, of which we have copies now before us. The effect of these palpable and not very excusable errors, was to reduce the balance of interest allowed to the deputies to the sum of \$4,126. Whereas, had an interest account been fairly stated, excluding the commissions, and allowing to the deputies interest on the balances, and crediting the houses with interest on their disbursements of each month, it would have exhibited a balance in favour of the deputies of more than \$15,000.† To correct mistakes of this description is the province of a court of equity, and it is

* Rep. p. 41. 4th and 6th article of the award.

† This appears by the accounts (A. B.) which we publish in the appendix, and which were carefully framed under our direction upon vouchers

a power which even in relation to awards, has been frequently exercised. In seeking the correction, we believed that we were not violating good faith, but promoting the interests of justice, and discharging our duty to our clients.

3rd. It will not, we presume, be asserted, (although even for assertions as bold as this we are not unprepared,) that the powers of the arbitrators were quite unlimited and discretionary. If not, then, according to the terms and the spirit of the submission which conferred and defined their authority, they had certainly no right to compel the Deputies to pay moneys as disbursed by the houses, which the houses themselves never claimed, and of the disbursement of which not only no proof was given, but not even an allegation made. Yet this the arbitrators, by their award, attempted to do. They allowed to the Messrs. Howland \$3,089 28, and to the Messrs. Bayard \$2,531 33, "as a banking commission on London," on bills remitted by them to their respective correspondents.* By "a banking commission on London," we understood (nor did

exhibited on the hearing. To these accounts we request the careful attention of our mercantile readers; as they show the moneys unexpended in the hands of the houses, and the dates of their *alleged* disbursements. They reflect a strong light on the question of commission, and demonstrate that of all the pretences that have been employed to cover extortion and injustice, that of an "extraordinary risk" incurred by the houses, is the most sophistical and untrue.

*(See the accounts of the arbitrators, Narrative, p. 34-5.) The reader may be puzzled to account for the difference in the sums allowed to the houses, "as a banking commission"—a difference in favour of the Messrs. Howland of more than \$500, although the bills remitted by the Messrs. Bayard in fact exceeded by £1,000 those of the Messrs. Howland. The explanation is this: In the bills stated to have been remitted to Mr. S. Williams, is included the draft of the 23d May, for £12,500 sterling, which was collected in full from the Messrs. Ricardo, but a portion of the proceeds of which was lost to the Messrs. Howland by Williams's failure. The corresponding draft of the Messrs. Bayard in favour of the Barings, is omitted in the arbitrators' statement of their account. Is it an uncharitable surmise that the \$500 were intended as a proof to the Messrs. Howland, that the arbitrators "felt the hardship of their case," and if they could not remunerate, were at least disposed to alleviate their loss?

it seem to us that the terms were susceptible of any other interpretation) a commission paid to the bankers in London, for the collection of the bills remitted. No charge of this nature was made by the houses ; no such item is contained in their accounts. It was not proved nor pretended that this commission had been charged against them, or exacted from them by their respective correspondents. We deemed its allowance, therefore, an act of gross and palpable injustice. In making such an allowance, the arbitrators, in our judgment, exceeded the authority they possessed, and abused that which they assumed: and had we omitted to obtain redress for our clients, we should indeed have been wanting "in good faith" to them, and to the sacred cause we had undertaken to defend. By the author of the Report of the Arbitrators, all that we have said was understood and felt. Judge Platt (whom we make no apology for considering as the author) was perfectly aware—he could not be otherwise—that the objection to the award, which we have stated, was of itself decisive and fatal ; and that the facts, unless they could be denied, or explained away, admitted of no other conclusion. The facts, we beg our readers to observe, he has not attempted to deny : he has not asserted that any claim for a banking commission in London was included in the accounts of the houses, or any evidence given that such a commission had been paid or charged. The answer of Judge Platt is—it is the only answer—that a commission of this kind is not that which the arbitrators intended to allow. They call it, to be sure, a banking commission in London ; but this they did not mean !*

"The houses charged $2\frac{1}{2}$ per cent. on all the bills drawn by them on the bankers of the Deputies in London ; and the arbitrators came to the conclusion that their claims should be reduced to one per cent., and confined to a part of the bills only ;" although they deem it unnecessary to give "a minute detail of the reasons and discriminations which led them to this result."

* Report, p. 62.

The temptation is great, but the subject is far too serious for ridicule. We mourn over this explanation. We lament that Judge Platt had not the magnanimity to confess an error it was impossible to defend: that to avoid such a confession, he has sunk from the elevation of truth and candour, on which we hoped to meet him. Still more deeply do we regret that his associates should have affixed their names, without examination or reflection, to the report which he prepared. Had they considered, with any attention, the passage to which we have referred, we cling to the belief that the statement it contains would have been indignantly expunged. We desire to abstain—we hope we have abstained—from all unnecessary harshness; but we must be explicit. We have no wish to provide for ourselves that retreat which the shelter of language, that seems to be decorous, but is meant to be equivocal, too often affords. As we cannot believe the explanation of Judge Platt to be true, we find ourselves compelled to say so. We do not believe, we cannot believe—the public will not, and cannot believe,—that a commission charged by the merchants in New-York, on bills drawn here—deducted from the proceeds of those bills as credited to their principals, and so charged and so deducted, not only according to the invariable usage of merchants, but in the very accounts produced to the arbitrators,—was intended to be allowed, *although reduced*, under the name of a banking commission in London. With as much propriety might it have been called “a banking commission in Paris or St. Petersburg.” There is no connexion between the name and the thing; and the terms employed when thus applied, have lost their meaning. We are confirmed in our disbelief of the explanation, because we have no doubt whatever of the true causes that led to the insertion of the banking commission in the accounts of the arbitrators.

On his cross-examination, Mr. James King stated, in answer to a question from Mr. Emmet, that it is the practice of the bankers in London to charge a commission of one per cent. on bills accepted or collected by them on account of their customers. When Mr. Emmet came to address the arbitra-

tors on the question of our right to an interest account, he suggested, that if interest were allowed to the Deputies, this banking commission in London should be credited as a set-off to the houses: and this suggestion, unauthorised as it was by the accounts, and alike unsupported by argument and by evidence,* the arbitrators hastily and incautiously adopted. That they did this, we cannot doubt, when we observe that the commission is charged in the arbitrators' accounts at the very rate to which Mr. King testified, and under the very name that Mr. Emmet had given it; and that it appears as a separate and independent charge, and is confined to those bills only which *the houses actually remitted to their bankers in London for collection*. We will only add, that the effect of Mr. Emmet's suggestion was, that the Deputies, instead of deriving any benefit from our claim of interest on their behalf, had the balance, by virtue of this set-off, thrown against them; so that even an admitted claim served only to increase the sum we were compelled to pay. We abstain from further comment, and leave our readers to judge of the motives that induced the arbitrators not to dwell on "the reasons and discriminations that led them to reduce the 2½ per cent. commission of the houses to one per cent., and confine it to a part of the bills only."

4th. We have said enough, we believe, in explanation of our motives for impeaching the award, and in defence of the position that the arbitrators abused and exceeded their powers. But there still remains an objection, to which it is our duty to advert, as it is one which the arbitrators, with what success remains to be seen, have endeavoured to obviate. We

* It is obvious, that had it even been proved that the houses had paid this commission to their correspondents, it would not have been chargeable to the Deputies. There was no necessity for the course that the houses pursued in remitting their bills; it was not contemplated by their instructions; and the Deputies could not be liable for an expense occasioned by an unauthorised act of their agents, adopted solely with a view to their own interest or convenience. The Deputies would no more have been liable to refund this commission, had it been paid, than they were liable to make good the loss of the Messrs. Howland.

refer to the sum of \$1,500 awarded by the arbitrators to Captain Chauncey, in addition to the \$10,000 which he had received under his contract. We shall not dwell on the extravagant injustice (it is the only combination of terms that can express our meaning) of this claim of Captain Chauncey. It has been sufficiently exposed,* and on this point there is, we imagine, very little diversity in public opinion. But had the claim been just and reasonable, we deny that the arbitrators had any right to consider or allow it. It was not covered by the submission—it was not included in the accounts of the houses—it had not been preferred or mentioned before the close of the hearing—and the counsel for the Deputies had no opportunity of contesting its propriety, or proving that the arbitrators were not authorised to admit it. They included it, however, in the gross sum awarded to the houses; and if without authority, as it could not be separated, it infected and annulled the entire award. On this subject, the arbitrators enter into no professed or formal defence of their conduct; but they intimate in their report, that the claim of Capt. Chauncey was allowed under a parole agreement of the counsel, that vouchers might be produced and credited after the hearing.† The very defence, our readers will observe, admits that the arbitrators had no right to allow the claim under the terms of the submission; and unless the power was derived from the agreement of the counsel, there was a total defect of authority. In a former part of their report,‡ the arbitrators strenuously insist that the counsel could not bind their clients even by a written agreement: but they now repose themselves with perfect assurance on the parole agreement of the same counsel, and give to it all the effect of a submission under seal of the parties. We could authorise the arbitrators, it seems, to pay over the funds of the Deputies, to any extent, in satisfaction of claims which they, by their only attorney, had never agreed to submit; but we could not protect the arbitrators against the “risks and responsibilities of their trust;” for if

* Narrative, p. 67, 8, 9; also Refutation, p. 11, 12, 13.

† Report. p. 37–40.

‡ Ibid. p. 8.

these had ceased, the personal compensation which they exacted would have been, in a great measure, without consideration or apology. The contradiction is somewhat striking ; but we shall not dwell on it, but admit, that if the arbitrators were authorised, by our parole agreement, to admit the claim of Captain Chauncey, their justification is so far complete. We deny, however, that any agreement was made, which, by any fair interpretation, could empower the arbitrators to allow this claim.

We agreed, (as has been already stated,) that the arbitrators should have the right to include, in the disbursements of the houses, the unsatisfied balances on charges *stated in the accounts*, provided the necessary vouchers of payment were produced : and we further agreed that the houses should, in any event, be allowed for current expenses, defrayed by them, accruing after the date of the submission. But in neither of these classes was the claim of Captain Chauncey included. His claim was for services from the first of March ; so that the greater part of it had accrued before the submission was made. It was not, therefore, “a current expense, accruing after the date of the submission ;” still less was it an “unsatisfied balance.” In the accounts of the houses, \$10,000 are charged as paid to Capt. Chauncey, for his services ; but no portion of *this* remained due. He had received it all. There were also charged \$14,000, paid to Captain Chauncey on his requisitions : but this sum, it was admitted, was intended for disbursements to be *made* by him, in relation to the ships. He was bound to apply the whole to this object. He had no right to retain any portion of it to his own use. He was therefore called to account for its expenditure ; and when the arbitration had nearly closed, he produced his vouchers. They showed an expenditure of \$12,500 ; but they also showed that Captain Chauncey had still in his hands \$1,500 unexpended. It was therefore obvious that this sum, as unaccounted for, was to be deducted from the accounts of the houses. This we claimed ; nor was the justice of the claim denied ;—and when the arbitration closed, we fully expected that the deduction would be made. It was our fate, however, to be disappointed in this expectation, as in many other hopes that we had che-

rished. Had the deduction been made, the houses would have been under the necessity of looking to Capt. Chauncey for the repayment of the sum deducted, and Captain Chauncey would have been liable to them for its payment. This would probably have been disagreeable to both parties; but the decision of the arbitrators operated to their mutual relief, by allowing the whole sum to Captain Chauncey, for his services, on a claim that had never been heard of, until the state of his vouchers disclosed the propriety of its existence.*

Such was the award that could not have been shaken, and which it was criminal to attempt to disturb. That we have by no means enumerated all the objections to which it is liable, will hereafter appear. We shall now proceed to consider, in succession, the claims of the houses, as exhibited on the hearing—as supported, opposed, rejected, or adopted. In the course of this examination, it will be seen to what extent the report of the arbitrators is chargeable with errors and omissions materially affecting the merits of the case.

We begin with the commissions; in relation to which we shall first exhibit, in contrast, the evidence as actually given by the witnesses, and as stated by the arbitrators. It is unnecessary to state the testimony of those witnesses with respect to which we do not complain of the report of the arbitrators.

* In the accounts of the houses, of expenses accruing after the hearing, (see *Nar.* p. 81–83, Nos. 4 and 6,) the reader will find a charge of an additional payment to Captain Chauncey, of 500 dollars by each house; and will naturally ask why this payment was made to a man who had already 1,500 dollars unexpended in his hands. The answer is this: On the same day that the additional accounts were delivered to the arbitrators, Captain Chauncey had presented his claim for his services, to the amount of more than 2,500 dollars. This the arbitrators could not award to him directly, for he was not a party to the submission. It could only be allowed by including it in the disbursements of the houses; and to enable the arbitrators to do this, the additional 1000 dollars are charged as actually paid. As the arbitrators would go no further than to allow to Captain Chauncey the balance before in his hands, the additional 1000 dollars was struck from the accounts of the houses, not, it may be hoped, much to their prejudice. This concert of action and views between Captain Chauncey and the houses, is very edifying, and if it existed to an equal extent throughout the operation, must have been very beneficial to Greece.

For the purpose of avoiding all mistake, the notes taken of the evidence of the witnesses named below, have been shown to them; and the following statement of their evidence, taken from those notes, with some very slight corrections made by the witnesses themselves, has been approved by them respectively.

H. D. SEWALL.

Report of the Arbitrators.

"*Henry D. Sewall*, merchant, a witness for the Deputies, testified that the usual commission for disbursing money in repairing ships, is $2\frac{1}{2}$ per cent. If goods are consigned to several houses jointly, and part sold by one and part by the other, no more than one commission of $2\frac{1}{2}$ per cent. is usually charged. If the factor draws bills instead of receiving the money, it is usual to charge one per cent. on the bills. *Refers to the regulations of Chamber of Commerce.*

"*Cross-examined.* On foreign business, he thinks 5 per cent. commission a justifiable charge; though he thinks it good policy generally to charge less. *If he drew foreign bills to reimburse for advances, he should think himself entitled to $2\frac{1}{2}$ per cent. commission on the bills, in addition to the 5 per cent. for the purchases.* If he were to divide the business with another house here, no more than single commission would be charged. He would not engage to build a frigate for a foreign government without guaranty. It is a business aside from all mercantile usage. If he had the security of a house of first respectability, he would charge 5 per cent. for building a ship.

"According to mercantile usage, no more than 5 per cent.

H. D. SEWALL'S

Testimony as given.

Has never charged more than $2\frac{1}{2}$ per cent. for purchases, nor for disbursements for repairs of vessels; never more even where his personal attention was given.

When two houses are employed, the commission is divided. This he has done in cases of sales, with Goodhue, and with Osborn. If he had to draw bills, would charge a commission: if he had a confirmed credit on a house of the highest character in London, he would charge one per cent. on bills. If 5 per cent. were charged by any person on disbursements, they would not thereby consider themselves precluded from charging a commission on bills.

The rates of commission in the articles of the Chamber of Commerce, are considered as the very highest. He has known deductions, never an increase.

"*Cross-examined.* There is sometimes a difference between commissions on foreign and domestic business. He would consider himself strictly entitled to charge 5 per cent. on sales of goods and on purchases, because that is authorised by the regulations of the Chamber of Commerce: but he should not consider it good policy to do so, and should not do it, if he ever expected to get again the business of the house for whom he acted.

is charged for extra risks, without express stipulation.

“*Direct.* If he had funds in hand, he should think he had a right to charge 5 per cent. commission, but that he should allow interest.”

He should consider himself entitled to charge $2\frac{1}{2}$ per cent. for drawing bills, when he had not funds in hand, and had the responsibility of the bills. He would not engage in building a frigate, without funds in hand, or a guaranty in behalf of a government whose stock was 50 per cent. under par. *If the house on which a credit of £25,000 sterling was opened, was of the first respectability, he should think that a sufficient guaranty.*

He should consider himself as undertaking, in any case, for the ordinary commission, and should not consider himself entitled, without stipulation, to charge more than the regular commission.

Should consider himself *strictly entitled*, even with money in hand, to charge 5 per cent. on disbursements, for the reason above stated, on account of the regulations of the Chamber of Commerce. In practice, he never would make a charge, on drawing bills, of $2\frac{1}{2}$ per cent., when he had money in hand. He would charge one per cent. when he acted as banker.

Being asked what he would charge when he had to meet in committee two or three times a week, and for going frequently to the ship-yards, he answered, that he should never charge more than the usual commission, whatever trouble he might have, unless he expressly stipulated for it.

WILLIAM W. RUSSEL. *Report of the Arbitrators.*

“*William W. Russel*, commission merchant, (witness for Deputies,) testified, that usual commission is $2\frac{1}{2}$ per cent. for disbursements, and $2\frac{1}{2}$ per cent. for drawing foreign bills for reimbursements. In case of joint consignees, there is but one commission. He has in one case charged 5 per cent. on expenditures, and $2\frac{1}{2}$ on

the bills. When there are two consignees, they divide the commission."

Mr. Russel explained the single instance of charging 5 per cent. for disbursements, by saying, that it was an order for munitions of war; that the articles were difficult to be procured; that the disbursements were inconsiderable, and the trouble great. And when asked if he would have charged more than $2\frac{1}{2}$ per cent. for disbursements, if the amount had been \$50,000, he answered in the negative.

GEORGE W. TALBOT.

Report of the Arbitrators.

"George W. Talbot, merchant, (witness for the Deputies,) testifies, that he charges commission on purchase of goods at $2\frac{1}{2}$ per cent., and 5 per cent. for repairing vessels, independent of drawing bills. There cannot be two commissions on the same agency."

GEORGE W. TALBOT'S

Testimony as given.

Charges $2\frac{1}{2}$ per cent. on purchasing goods. Should charge $2\frac{1}{2}$ per cent. on bills, if he had to draw. Considers himself entitled to charge 5 per cent. for disbursements on ship business. *If no risk incurred, he thinks $2\frac{1}{2}$ would be taken.*

Can't conceive of such a case as two houses each charging a separate commission on the same transaction. The charges of which he has spoken, apply where there is no special contract.

If he felt perfectly easy about the funds, he would do the business for $2\frac{1}{2}$ per cent.

JONATHAN OGDEN.

Report of the Arbitrators.

"Jonathan Ogden, merchant, (a witness for the Deputies,) testified, that usual commission for disbursements in fitting out ships, is 5 per cent. without funds in hand; that is, $2\frac{1}{2}$ for the expenditures, and $2\frac{1}{2}$ for drawing bills. Was never employed to build a ship."

JONATHAN OGDEN'S

Testimony as given.

He presumes 5 per cent. the regular charge. He should charge 5 per cent. where he had to disburse and draw bills, if there was no risk.

To question by Mr. De Rham. —He should think 5 per cent. the extreme for disbursements and drawing, no matter what trouble.

Cross-examined. Never had charge of building a ship.—Don't know that he is competent to answer. At present, not pre-

pared to say what commission he would charge.

To question by Mr. Duer.—Certainly would not charge more on building ships than 5 per ct. for disbursements and drawing, if he undertook it, without giving notice of his intention thus to charge.

Is in the habit of charging $1\frac{1}{2}$ per cent. for drawing bills.

GEORGE BARCLAY.

Report of the Arbitrators.

“George Barclay, merchant, (witness for the Deputies,) testifies, that the usual commission for disbursements is 5 per cent. when he draws bills for reimbursement. The house of *Ricardo* is very respectable. If he had a confirmed credit, he should charge 5 per cent. for building a ship for a foreign correspondent.”

GEORGE BARCLAY'S

Testimony as given.

His house, *Henry & George Barclay*, charge 5 per cent. for disbursements, including commissions on drawing bills. This is the highest charge. His house are agents for the Underwriters at Lloyd's, and in the frequent habit of procuring repairs, to a very considerable extent, upon damaged vessels. Invariably charge 5 per cent., including drawing bills. Always divide the commission in case of a joint consignment.

Knows the *Ricardos*, from reputation; a very respectable house. Furnished with a letter of credit on them, would not hesitate to undertake the business, unless to a very exorbitant amount.

Cross-examined. Have had vessels to repair belonging to their own correspondents. When we get a full commission, never charge on the bills. Optional with the captains to put the goods damaged in our hands. Not more than once in three do we get the consignment of damaged goods. Should consider 5 per cent. a sufficient commission for building, when he had confidence in the house on which he drew. Without a confirmed credit, he would decline a com-

mission in favour of a government whose bills were at 50 per cent. discount.

Being asked if he would trust the Ricardos for \$100,000, he answered that he would.

Being asked if he would charge the usual commissions on a transaction to the extent that the houses had gone, he answered that he would ; *and that the larger the amount, the less would be the commissions he should be willing to undertake it for.*

JOHN R. HURD.

Report of the Arbitrators.

"*John R. Hurd* merchant, (witness for the Deputies,) says commissions vary from $2\frac{1}{2}$ to 5 per cent. for disbursements, *independent of drawing bills.* Commissions always divided where several consignees."

JOHN R. HURD'S

Testimony as given.

Commissions on foreign business, 5 per cent. the highest. *This includes a commission on bills.* When he draws bills, independent of any other business, charges from 1 to 2 per cent. for drawing the bills.

Being asked at what rate he would do the business, if he had not full confidence in the house on which he drew—he answered, that in such a case he would not do the business ; but if he had confidence in the house, he would charge only the usual commissions.

PETER HARMONY.*

In this gentleman's testimony, the arbitrators have omitted the statement of the witness, that he never had a case of a joint commission or consignment.

JAMES BOORMAN.

Report of the Arbitrators.

"*James Boorman*, merchant, (a witness for the Deputies,) says the regular commission on

JAMES BOORMAN'S

Testimony as given.

The regular commission on purchases of goods, is 5 per cent. for disbursements *and drawing*

* This has not been shewn to Mr. Harmony.

purchases of goods is 5 per cent., and single commissions only in case of consignment to two persons."

bills Only a single commission on a consignment to two houses. He never heard of a case of charging two commissions on the same transaction.

Cross-examined. Says he does not mean to speak at all of the building of frigates.

SAMUEL HICKS. *Report of the Arbitrators.*

"*Samuel Hicks*, merchant, (a witness for the Deputies,) says the usual commission for building or repairing vessels, is $2\frac{1}{2}$ per cent. for advances, and $2\frac{1}{2}$ per cent. for drawing bills. In contracting with a foreign government he should think it more hazardous; and he would not contract for a *ship of war* for any commissions. Would not contract for so large amount; but if he did undertake, would not think it right to charge more afterwards."

Those who do not know that Mr. Hicks belongs to the Society of Friends, (and there may be such among the readers of the Report of the Arbitrators, notwithstanding the extensive reputation of Mr. H. as a merchant, would infer, especially from the words "*ship of war*" being in italics, that Mr. Hicks meant to say that there was a peculiar risk attending the building of ships of war. We feel confident that any person who heard Mr. Hicks, must have understood that when he spoke of ships of war, he referred to his religious principles, and not to the risk.

Whether this be so or not, Mr. Hicks afterwards stated, that *if he went i to the business of building frigates, he should not consider himself entitled to charge any more than $2\frac{1}{2}$ per cent. for disbursements, and $2\frac{1}{2}$ for drawing bills.*

MR. BURCKLE.

Mr. H. D. Sedgwick has noticed an important omission by the arbitrators in their report of this gentleman's testimony—viz. that he would have charged 10 per cent. commissions *with funds in hand*. Upon this Mr. Sedgwick founded his remark, that upon the testimony of this witness it was unnecessary to comment. This Messrs. Emmet and Ogden have referred to, as if it were intended to impeach Mr. Burckle's veracity. This is not so. All that was intended, was to show

that his opinions could be of no authority. In justice to Mr. Burckle, it ought to be added that he is a foreigner, has not been long resident in this city, and cannot be supposed to be acquainted with its mercantile usages.

GEORGE GRISWOLD.

Report of the Arbitrators.

"George Griswold, merchant, (witness for the Deputies.) says the usual commission for selling goods is $2\frac{1}{2}$ per cent., and $1\frac{1}{2}$ per cent. for drawing bills on confirmed credits; but practice is variable. Commission for repairing vessels is more than on sale of goods. For building ships, and drawing bills to reimburse, 5 per cent. When two persons execute an agency, they divide the commissions; each takes half."

GEORGE GRISWOLD'S

Testimony as given.

For disbursements on purchase of goods charges $2\frac{1}{2}$ per cent. commissions. He should suppose with a confirmed credit, that the commission did not exceed from 1 to $1\frac{1}{2}$ per cent. for drawing bills. If the sum was very large, he should suppose the commission less, if a perfectly safe operation. He should think 5 per cent. the extent of both.

Usual, when there is any thing extra, or out of the usual course, to state it, and make an agreement accordingly.

Never knew nor heard of two houses each charging a commission for the same thing. If two houses undertake to build together, that is a matter between them.

Before we proceed to state the grounds on which we denied that the houses were *entitled to any compensation*—a point that the arbitrators have wholly omitted to notice—we shall make a few observations that are suggested by the evidence that has been exhibited. The houses charged $2\frac{1}{2}$ per cent. commissions on the bills which they had drawn; and they also claimed a commission of 5 per cent. to each house on the whole amount of their disbursements:* that is, each house claimed that commission, not only on its own disbursements, but on those of the other. It was not pretended that the commissions were charged in this manner, as a mode which the houses had adopted to divide a single commission of 10 per

* The aggregate amount of the commissions exceeded 100,000 dollars.

cent. No claim of a commission at this rate was made or alluded to in the accounts ; and on the hearing, it was expressly and strenuously insisted that the houses were under no obligation to divide their commissions, but that each was separately entitled to the same commission as if it had separately performed the whole services, and defrayed the whole expenses. It was therefore admitted, that 5 per cent. was charged as a full commission ; as the sole commission to which either of the houses would have been entitled, had it singly made the whole disbursements ; and their separate right to which, it was insisted, was not affected by their union in the same trust.

It was against this extraordinary pretension of a double full commission, our readers have seen, that a large portion of our evidence was directed, and in support of it some witnesses, particularly Messrs. Harmony and Burckle, were examined on behalf of the houses. If we were successful in proving, that by the established usage of the merchants of this city, where an agency is entrusted to several, a single commission only can be charged—in other words, that all receive and divide the same commission, as if one only had been employed—we expected, as a natural and necessary consequence of our success, that the commission of 5 per cent., instead of being allowed to each house, would have been divided between them ; or, which would have had the same effect, that the commission of each house, as charged, would be limited to its own expenditures. We therefore confidently hoped, that by defeating this pretension of the houses, more than \$40,000 of the funds of Greece would have been saved. We were, however, disappointed—lamentably disappointed. The evidence of mercantile usage that we adduced, was indeed most clear and decisive—too much so, to be disregarded or resisted. The arbitrators were therefore compelled to reject, and did reject, the claim of the houses to a commission on the expenditures of each other.

But the rejection was most barren and fruitless—it was a mockery, and not a relief ; for the houses are immediately indemnified, by an allowance of 10 per cent. commission on the

same disbursements on which they had ignorantly claimed only five. The Messrs. Howland had claimed, on the disbursements of the Liberator, somewhat more than \$20,000. The arbitrators give them more than \$40,000. Nineteen thousand and some hundred dollars were charged by the Messrs. Bayard, on the disbursements of the Hope. The arbitrators correct the error, and double the amount. We shall not now discuss the reasons that the arbitrators have assigned to justify their allowance of 10 per cent. as a fair and reasonable commission; but against the allowance itself, we do most earnestly protest, as an *unauthorised act of power*. No such claim was presented, exhibited, or discussed on the hearing. Neither the evidence of the witnesses, nor the arguments of the counsel, were directed to meet it. No such claim was intended, or could have been intended by Mr. Contostavlos, to be submitted to the decision of the arbitrators; nor could their powers, upon a legal or reasonable interpretation, be construed to embrace it.

The preamble to the submission recites, that a controversy had arisen between the Deputies and the houses, respecting certain charges, claims, and accounts of the houses, growing out of the contract for the building of the frigates; and the submission then proceeds to refer those claims and accounts to the arbitration of the persons named. What, we would ask, are the claims and accounts here referred to? Plainly those which the houses had previously exhibited to Mr. Contostavlos, and which he had refused to admit or allow: and the controversy which the arbitrators were called to decide, and to the decision of which their powers were meant to be limited, was the controversy that had "thus arisen." Had the preamble, indeed, been less explicit, or had it been altogether omitted, still the construction of the submission, on general principles, would have been the same. It has been solemnly determined,* that the powers of arbitrators, even where the terms of the submission are unlimited, are confined to the settlement of differences existing at the time of the submis-

* *Ravee vs. Farmer*, 4 Term Rep.

sion. And the reason approves itself at once to the judgment and the conscience : as no other differences are within the knowledge of the parties, none other can they intend to submit. When the houses and Mr. Contostavlos agreed to submit their controversy to arbitration, there was no difference between them in relation to a commission of 10 per cent., for no claim to such a commission had been advanced or pretended ;—for aught that the arbitrators could have known, had such been made, it would not have been referred to their decision. The question which the arbitrators were called to decide, was, whether the houses should be compelled to divide a commission of 5 per cent. ;—and the power which they assume and exercise, is to allow and divide a commission of double the amount.

In answer* to all our complaints on this subject, the arbitrators gravely assure the public, that the result to the Greeks was precisely the same as if the commissions had been allowed in the manner they were charged. True. And the same answer could have been given, had the arbitrators rejected any other unjust pretension of the houses, and had sought to compensate them by the admission of another claim to an equal amount *before unheard of*. The arbitrators refused the damages claimed on the protested bills. Had they, without claim and without proof, added their amount to the disbursements of the houses, the reply that “ it was the same thing in amount to the Greeks,” whether the sum was allowed as damages or disbursements, would have been equally suitable and satisfactory. That the result to the Greeks is the same, is precisely the ground of our complaint. We complain that, having defeated, on the clearest evidence, a most unfounded claim, we derived no benefit from our success ; that its fruits were intercepted by an act of power without right, and thrown into the same whirlpool in which so large a portion of the resources of Greece had been already engulfed.

If the arbitrators approved, and meant to sanction the commissions as charged, why did they not ratify them in the form

* Report, p. 57.

in which they were stated? Why did they remodel the accounts, which the parties had themselves exhibited, and by which they had consented that their claims should be tried? To this the arbitrators say, that "they preferred to state the allowance at the rate of 10 per cent. to each house, upon one ship only, because it was more equal, as between the houses, that each should receive the commissions on its own disbursements, which were unequal in amount." Further than this, the abstract love of justice was certainly never carried. But it is in vain that our respect for the arbitrators would force our credulity to receive the explanation. If the inequality existed of which they speak—(that it did, we do not deny)—was it the province of the arbitrators to correct it? Could they, for a single moment, have deemed it proper to exercise this power? The disbursements of the houses, it is true, were unequal in amount; but what was this to the arbitrators? What relation had it to the questions which they were called upon to decide—questions not between the houses, but between them and the Deputies? If, notwithstanding the disbursements were unequal, the houses were willing, and had agreed to divide equally the commissions, had the arbitrators any right—could they have supposed they had any—to disturb and rescind this agreement? That the houses had agreed to this equal division, their accounts, as furnished, are conclusive evidence. What right had the arbitrators, at the expense of one house, to allow to the other, one or two thousand dollars more than it had claimed and consented to receive? Did the Messrs. Howland, who were to be benefited, require it? Did the Messrs. Bayard, who were to lose, consent to it? This is not pretended. No; the arbitrators were themselves struck with the inequality of the distribution, and by the pure love of justice only were they moved to correct it! There are some who may be willingly blinded by the mist of this apology; but from those who choose to see, it cannot long conceal the truth. It vanishes when we seek the light. The plain truth is this: The arbitrators could not sanction the claim of each house to charge a commission on the disbursements of the other—they could not

allow a full commission to each, without manifesting a contemptuous disregard of the evidence they had heard, and without shocking the universal sentiment of the mercantile community. They felt themselves compelled, therefore, to limit the commission of each house to its own expenditures. Had this limitation been carried into effect on the accounts as they stood, the commissions would have been reduced to one half of the amount that was claimed. The arbitrators deemed it proper to prevent this consequence, and therefore the accounts are remodelled, and the rate of commissions doubled. That in doing this, the arbitrators exceeded, intentionally, their powers, we certainly do not mean to assert: but that they did not inquire, with much solicitude, into their extent, and did, in fact, exceed them, to the very serious prejudice of those whose cause we were defending, we most assuredly believe.*

We shall now proceed to state the grounds on which we sought to defeat or reduce the commissions of the houses as claimed in the accounts.

In their letter to the arbitrators, Messrs. Emmet and Ogden charge Mr. Duer with having said in his letter to Mr. Sedgwick, "that his impression was, that the arbitrators had omitted the whole of the evidence respecting the commissions. It seems to be generally admitted that the letter of the counsel was hastily written, and of this no stronger proof could be required than this singular mistatement; a mistatement, which, undesigned as it surely was, can be ascribed to no other cause than extreme haste. A single glance at the letter of Mr. Duer would have shown the counsel that he had not said what they impute to him. The reflection of a single moment would have convinced them that he could not have said it; that he could not have said what no person could open the pamphlet of the arbitrators and not find to be untrue. Mr. Duer did say, "That the arbitrators had omitted to state the grounds on which the counsel for the deputies mainly relied to defeat

* In reference to this subject see Mr. Sedgwick's "Refutation," p. 32. and Mr. Contostavlos' Narrative, p. 65.

“ the claim for commissions, and the evidence in support of them. And that his impression was, that they had omitted *“ the whole of that evidence,”* that is, the evidence before referred to ; the evidence in support of the grounds on which we relied to *defeat* the claim for commissions. This is somewhat different from an assertion “ that the arbitrators had omitted all the evidence respecting the commissions !” and it is literally true. The counsel for the deputies contended that the houses had *forfeited* all claim to any compensation as agents, in the shape of commissions or otherwise, by the violation of their instructions ; the breach of their known duties ; their negligence and ill faith in the execution of their trust. It nowhere appears in the report of the arbitrators that these positions were taken, and yet it is certain that the larger portion of the documentary evidence was produced to support them, and that to elucidate and establish them was the main object of the closing argument on behalf of the deputies.

In proof of the misconduct of the houses, we shall state with as much brevity as we can, various specifications, and the evidence applicable to each.

It shall not be for want of care on our part if the public are not enabled to form a correct and final judgment of the conduct of the houses, and of the propriety and justice of the award.

1. The houses violated their duty in building vessels of a much larger size than they knew were contemplated by their instructions, and intended by the deputies.

The fourth article of the instructions directs the houses to contract for the building of two frigates, but is silent as to the dimensions. The fifth directs that Gen. Lallemand shall ascertain that the frigates contracted for shall be of the first class, (*du premier rang.*) It will be said that the *Liberator* and *Hope* are about the size of, or not much larger than the *Brandywine* and other frigates of the first class in our navy, and which, although we choose to style them frigates, are in truth, like the Greek frigates, ships of the line ; double-decked sixty-fours. How then does it appear that the houses violated their instructions ? Thus :—They knew that by “ frigates of the first

class" the deputies intended frigates of 15 guns per side, or 50 gun ships, which *the deputies* believed to be equal to those of our navy, and which alone by the instructions of their own government they were authorised to build.

First, in the autumn of 1824, the Greek Deputies wrote to Messrs. Le Roy, Bayard & Co. for correct information, such as they would be warranted to act on, as to the cost of a frigate equal to those of our navy, and of the force which their own government had authorised, that is—15 guns per side. This letter, it is true, we have not in our possession ; nor was it produced before the arbitrators. It is one of those unfortunately mislaid documents for which we called in vain ; but that its import was such as we have stated, the reply of Messrs. Le Roy, Bayard & Co. renders certain. That reply is dated the 7th December, 1824 ; it is of such interest and touches on so many of the material points of the controversy, that we publish it entire in our appendix. The letter commences thus—" We have received the letter which you have done us
 " the honor of addressing to our house, with a view of obtain-
 " ing information as to the cost of a frigate *equal to those of*
 " *our government*, of a vessel carrying a single gun, and of
 " different military stores, (munitions de guerre.) In reply,
 " we have the honor to enclose a detailed estimate which fully
 " meets (satisfait) your several inquiries, and to this we
 " take the liberty of referring you." The estimate is of a frigate of 50 guns and 1500 tons, which is therefore in terms asserted to be equal to those of our navy. Secondly, upon this estimate the deputies founded their resolution to execute in part the instructions of their government by ordering the construction of two frigates in this country ; that is, they ordered the building of two frigates, in the full belief that their cost would correspond substantially with the estimate that had been furnished. The letter of the deputies to Messrs. Le Roy, Bayard, & Co. dated the 8th of March, 1825, opens thus :—
 " *Upon the information* which you have given to us in your
 " letter of the 7th December, we have taken the resolution to
 " entrust to your care the purchase or building o two fri-
 " gates for our government, requesting you to govern your-

"selves entirely by the enclosed instructions."* Thus the *information given* is stated as the cause of the resolution adopted. What was that information? Information calculated and intended to govern the belief of the Deputies as to the probable cost of the frigates they were authorised to purchase. Had the Deputies said, "We give you an order for the building of two frigates on the faith of the estimate you have sent, and believing that the cost will not differ materially from your statement," their meaning would not have been expressed in terms less equivocal to an honest mind than those which they actually employ. Yet in the face of such evidence Mr. William Bayard says, (Exp. p. 41.) "the estimate of the 50 gun ship has been *most unfairly referred to* as that on which the Greek Deputies calculated the expense of their frigates." Lastly, the houses knew that the Deputies were not themselves authorised, and therefore could not authorise others to build frigates of a greater force than 15 guns on a side, that is, 50 gun ships. The *Liberator* and *Hope* carry 16 guns on a side, and are European ships of the line.

If the intentions of the Deputies were at all ambiguous, it was the duty of the houses to have construed them by referring to the authority under which they acted, and to enable them to do this, and thus govern their own conduct, the deputies transmitted to them an attested copy of their instructions from their government. The 1st and 2d articles of their instructions state, that the Deputies "should have full power to purchase 2 frigates, always however, *consulting the interests of their country in regard to their price*, and that each frigate should carry 15 guns on each side." That the Deputies knew the relation in which they stood towards their own government, and from an anxious sense of their responsibility were desirous that their agents should understand it also, will sufficiently appear from the following extract. The letter

* "*D'après les renseignements que vous nous avez donné dans votre lettre du 7 Dec. nous avons pris la resolution de confier a vos soins l'ordre d'achat ou construction de deux frégates,*" &c. &c.

from which it is taken is addressed to both houses, and is dated 23d June, 1825. "In all our correspondence, gentlemen, we have not ceased to recommend to you as points of the utmost importance in the conduct of the enterprise entrusted to you, the good quality of the timber, and of the materials in general, *and economy*. Our position in this affair, as it respects our government, is so delicate, that we believe it proper to enforce again these recommendations. We are but the echo of the positive instructions which our government has given us."*

The estimate of the 7th December, Mr. William Bayard assures us was applicable solely to a vessel of 1500 tons carpenter's measurement, and has therefore been most unfairly used as an evidence of the extravagant cost of the frigates actually built—when properly considered, it justifies a conclusion directly opposite. The *Liberator* and the *Hope* average, as Mr. Bayard says, about 2100 tons carpenter's measurement; and had an estimate been made applicable to them upon the same principles as that transmitted to the deputies, it would have carried the cost of each to \$368,500, exclusive of the extra shot, &c. without taking into consideration the advance of wages and materials. Make the proper allowances for these additional charges and add the ship builder's compensation, and the commission of the houses, which Mr. Bayard has omitted, and we arrive at \$550,000 and upwards, as the fair cost of each frigate, so that the actual cost, instead of being a subject of complaint as exceeding, has fallen greatly short of the estimate furnished. This is very plausible and very bold; that the calculations of Mr. Bayard are deceptive and untrue will here-

* "Dans toute notre correspondance, Messrs. nous n'avons cessé de vous recommander les points les plus importants qui ont rapport à l'administration de l'entreprise dont vous êtes chargé, la bonne qualité du bois, de tous les matériaux en général, et l'économie. Notre position vis-a-vis de notre gouv't. (en ce qui concerne cette affaire) est si délicate que nous croyons à propos de revenir à la charge de nos recommandations. Nous ne sommes que l'écho des instructions positives que nous avons de notre gouv't."—They add in a spirit of blind confidence—"Il nous est agréable de penser que nous n'aurons que des éloges à vous faire"—des eloges!

after appear to the conviction even of those who are most willing to believe them. We content ourselves at present with drawing the attention of our readers to the very singular dilemma in which this defence of Mr. Bayard involves the houses. The estimate contained in the letter of the 7th December, either referred to a frigate "equal to those of our navy," as the letter itself asserts, or it did not. If it did, then the argument founded on the estimate that the actual cost of the frigates is exorbitant, and that the funds of Greece must have been wasted and misapplied, was fair and just, *and remains unanswered*; if it did not, if it was "solely applicable to a vessel of 1500 tons carpenter's measurement," how are the houses to be vindicated against the charge of having built vessels more than one third larger in size than that to which the estimate, and, consequently, their instructions referred? On the faith of an estimate obtained for the sole purpose of enabling *them to decide whether to build or not*, the Deputies ordered the building of two frigates, believing that the aggregate cost would not exceed \$500,000, and the houses having received the order, proceed to build two vessels of which they knew, according to Mr. Bayard, that the cost must exceed a million!—And this without giving to their employers the slightest hint or intimation that could enable them to decide how far it was consistent with their duty, and with the interests of their country, to authorize so unforeseen and enormous an expenditure! To sum up briefly, the whole case is this. The Deputies were authorized to build vessels of 15 guns on each side; and they require from the Messrs. Bayard an estimate of the probable cost of a vessel of that force. They received an estimate *in fact* applicable to a frigate of as large a size as the United States had then built, but entitled as for a ship of 50 guns. It is satisfactory—the solicited order to build is sent—the agents proceed to build at *more than double the cost of the estimate furnished*, and when an explanation is required the houses reply—'You have no reason whatever to complain of this increased expense. The estimate we sent had

' no application to the ships we have built. It was entirely
 ' useless for the purposes for which you required it, and was
 ' disregarded by us the moment we received your instructions.
 ' It answered no other purpose than that of deciding you to
 ' build, of gaining your confidence, and giving us the posses-
 ' sion of the funds you have remitted. Those \$750,000 are
 ' now expended. All that we ask is that you should pay us
 ' \$280,000 more, and we will deliver you your frigates ; and
 ' at a small additional expense of \$170,000* you may then
 ' fit them for sea. They will stand you about \$600,000
 ' each, which is not three times as much as our estimate led
 ' you to expect. Our friendship for Greece renders us very
 ' desirous that you should be silent, and pay us quietly what
 ' we ask. There are other reasons why you should be silent,
 ' that we have hitherto suppressed, but must now disclose.
 ' *You are in our power.* We told you, it is true, that there
 ' was no law to prevent the building of your frigates, and
 ' that there would be no difficulty in despatching them to
 ' sea ; but this was before the actual building had commenced,
 ' and when we had only received the first confirmed credit of
 ' 50,000*l.* sterling. Our object then was to prevent you from
 ' countermanding your orders. The transaction has now ar-
 ' rived at a different stage—our object now is to compel you
 ' to settle our accounts. We now tell you, that the whole
 ' enterprise is illegal—that your ships and all your property
 ' in our hands are liable to be seized and forfeited, and if you
 ' utter publicly a single complaint, they will be seized ;
 ' whilst in no event can we be the sufferers, as our claims will
 ' be secured to us. In conclusion, we repeat our assurances
 ' of our entire devotion to the interests of Greece. “ † The
 ' “ cause of your country,” we confess, “ is dear to the hearts of
 ' “ freemen in every quarter of the globe ;” and we are acting,

* Capt. Chauncey estimated the expense of fitting the Hope for sea at \$36,000.

† Exposition, p. 36, paragraph beginning “ In conclusion, &c.

“you must be sensible, in the spirit of a munificent “charity
 “worthy of a cause so holy and momentous!”’

Mr. Wm. Bayard says, (Expos. p. 27) after making the statement and giving the calculations to which we have referred, “All these circumstances, fully explained and proved before the Arbitrators, and well understood by Mr. C., are “studiously suppressed in order to give some colour of foundation to the charge, that the first estimate was furnished to “the Deputies for the purposes of premeditated deception.” Mr. C. nowhere says, or intimates, according to our recollection, that the estimate was furnished for purposes of deception. The deception of which he complained was not in the original estimate, but in the subsequent expenditure. The estimate is, indeed, not applicable to a frigate such as the Deputies were authorized to build, of 15 guns on each side, and so far it deceived the Deputies; but it was a fair, though high estimate of the cost of a frigate of the first class in our navy. “All these circumstances” Mr. Bayard says, “were “fully explained and proved before the arbitrators.” What circumstances? Does he mean that it was fully explained and proved, that the estimate was solely applicable to a vessel of 1500 tons, *carpenter’s measurement*, and that if applied with the additions he has made to the *Liberator* and the *Hope*, it would have carried the cost of each to more than half a million of dollars? He can mean nothing else,—and to his assertion, therefore, we must oppose our direct and unqualified contradiction; no such explanation was made or attempted—had it been, its absurdity and untruth would have been instantly exposed.

What has Mr. C. suppressed? He has published, in full, the estimate as furnished, and has headed it as an estimate for a ship of 50 guns. If it be solely applicable to a vessel of 1500 tons, *carpenter’s measurement*; that is, to a vessel several hundred tons inferior in size to the frigates of the first class in our navy, the *fact* that it is so, will be apparent to all who understand the subject, on an inspection of the items as charged. If these are found greatly inferior in quantity or value to the corresponding articles as furnished to our frigates,

then the assertions of Mr. Bayard may be true—but if on such a comparison, the quantity and cost are found to agree, then we are sure that this allegation of a difference of tonnage, and all the calculations founded on it, are pretended and fallacious. This comparison we earnestly request our readers to make: it will not detain us long. It so happens that the two first items in the estimate are of themselves fatal to Mr. Bayard's explanation, and demolish all his calculations. The first item is "20,000 feet of live oak, for the frame;" and this our readers will find on inquiry is the estimated quantity for a frigate of the first class. The charge, for this item, is \$30,000, at \$1 50 per foot. The second item is "other wooden materials, \$30,000," making the cost of all the wood \$60,000.

We have now before us an official statement of the actual cost of the Brandywine, annexed to a report made by the Secretary of the navy to the President, in December, 1825, and by the President communicated to Congress. The whole charge for "wood" is \$59,541 51; and it is obvious that this includes all the wooden materials of the ship. There is, indeed, another charge, headed "other materials," amounting to more than \$56,000; but this item, we are informed in a note, embraces the ordnance and stores, and all the expenditures for *equipment and outfit* then ascertained. There is no intimation that the other expenses as charged had not been fully ascertained.* We have also before us an estimate† of the value of the Liberator, made by the commissioners appointed by the navy department. The wood of the Liberator, comprehending her frame, is valued by these experienced officers at \$45,000, making a deduction of \$19,800 from the sum at which the valuation would have been made, had the frame been of live oak. We shall compare but one item more—Labour in the estimate furnished to the Deputies is valued at \$60,000. In that made by the commissioners the labour actually performed on the Liberator is valued at \$55,000! It cannot, therefore, be doubted, that the estimate

* Message of President, and document annexed—Dec. 1825. p. 156.

† See this estimate. Appendix, No. 5.

furnished to the Deputies was meant to apply to a frigate of the first class. The conclusion, however painful, is irresistible, that the bold statement and specious calculations of Mr. Bayard were framed to deceive the public. He felt that a comparison of the previous estimate and subsequent cost of the frigates would justify the worst suspicions entertained by the public and expressed by Mr. Contostavlos; and he has resorted to those means of defence which the urgency of his case suggested.

Mr. Bayard says, (Expos. p. 13,) that it does not concern him to explain or justify the fact, "that the government of the United States, in the plenitude of its generosity, has thought fit to receive one of the Greek frigates at about one half its cost." He means, that the government have knowingly purchased the frigate at a price far below its value—far below what it would have cost had they built it; and, therefore, that no inference unfavourable to the houses ought to be drawn from a comparison of the sum which Greece has paid, with that which she has received.

The censure on the government and its officers is easily understood, and its propriety, as proceeding from Mr. Bayard, we suppose, will be universally felt. It is most unfounded, and must be repelled. It is not true that the Commissioners meant to speculate on the necessities of Greece—that they sought in her distress, a dishonourable gain to themselves or the government. A thought so unworthy and base never for an instant polluted their intentions. They acted in the spirit of their trust, which they well understood, and meant that their estimate should not merely be fair, but liberal. We feel authorised to assert, that their estimate was made, not on the principle of the actual value of the ship, but of the actual cost of the materials and labour, to which their valuation extended. They meant to give at least as much as, in their judgment, it would have cost the government to build a frigate of the same materials and dimensions.*

* Further observations on this subject will be found under the head of *Disbursements*.

The reader will search in vain in the Report of the arbitrators, for any trace of the letter of the 7th December, and its enclosed estimate. Nowhere will he find even an allusion to the fact that such an estimate was furnished, or had any influence on the determination of the Deputies to build. The two principal charges against the houses, those on which we relied with most confidence to defeat their unjust pretensions, were, that they had deceived the Deputies in relation to the *safety* (legality) and *expense* of the operation entrusted to their care. The principal documents in support of these charges, were the letter of the 15th April, already so often referred to, and the letter and estimate of the 7th December. The arbitrators have omitted both; and yet they are indignant that the fidelity of their report is called in question.

2. The houses were guilty of very gross negligence in undertaking to build the frigates by days' work, without having procured any estimate of the probable cost of a very unusual operation, or having, in fact, procured or made any calculations on the subject: and they obtained the assent of the Deputies to this unexpected plan, by the false assertion that they had made a scrupulous examination of all the details, and had ascertained that a very great saving would result.

We proceed first to the evidence. The resolution to build by days' work, was adopted early in May, and communicated to General Lallemand in a letter, dated the 10th of that month. This letter the reader will find in page 12 of the Arbitrators' Report. It asserts, that the houses were then in possession of the necessary information on the subject of the building of the frigates in this and other seaports in the United States, and that they had received estimates and proposals for the building; and they evidently found their opinion of the expediency of building by days' work, on the information so possessed, and the estimates, &c. received by them. They then submit their opinion to General Lallemand, and request his advice and instructions. The approbation of the General being obtained, the houses, on the 14th May, wrote thus to the Deputies:—"We confirm
" the letter which we had the honour to address to you on the

“ 15th of April ; and proceed now to inform you, that after
 “ much reflection, and having calculated every thing with the
 “ utmost care, we have resolved, with the approbation of Ge-
 “ neral Lallemand, to build the two frigates ourselves, under
 “ the inspection of a distinguished and experienced officer of
 “ the United States navy. After a scrupulous examination of
 “ all the details, we are convinced that a great saving will
 “ result, and that the building will be completed in a shorter
 “ time. Had we built the vessels by contract, we should have
 “ been obliged to pay a higher price, as our ship-carpenters
 “ are accustomed to claim large profits, and we should have
 “ been exposed to the risk of having the work less faithfully
 “ performed.”* We now request the attention of our readers
 to the several assertions made or implied in the letters above
 referred to. First—That the houses were in possession of
 full information as to the cost of building frigates, as well in
 other seaports as in this city. That it was the duty of the
 houses to have obtained this information, will be doubted by
 none : that they felt it to be so, is evident from the solici-
 tude with which they assert its performance. During the ar-
 bitration, we were led to doubt whether any inquiries what-
 ever, as to the probable cost of building the frigates in other
 ports of the Union, had been made : and we finally rested in
 the conviction, that the plan adopted by the houses, of build-
 ing the vessels themselves by days’ work, had not been adopt-
 ed from any belief of its superior advantages to Greece, but
 was the original plan on which the houses had determined,
 with a view to their own security, and to the increased profits

* “ Nous vous confirmons la lettre que nous avons en l’honneur de vous
 adresser le 15 Avril et venons vous faire part qu’après beaucoup de re-
 flexions et avoir tout calculé avec le plus grand soin nous avons avec
 l’approbation du General Lallemand déterminé de faire construire nous
 mêmes ces deux frégates sous l’inspection d’un officier de la marine des
 Etats Unis, distingué et expérimenté. D’après un examen scrupuleux
 de tous les details, nous sommes convaincus qu’il en resultera une grand
 economie et plus de promptitude pour la construction ; en contract ant
 pour ces batimens nous aurions dû payer un prix plus élevé, les construc-
 teurs ayant la pretention de faire de grands benefices, et être exposés à un
 travail executé avec moins de fidelité.”

to be derived from their commissions. We shall be greatly deceived if a similar conviction is not produced on the mind of the public. The arbitrators represent General Lallemand as having said, on his cross-examination, that “he made inquiries at Boston, Philadelphia, and Baltimore, in regard to the expense of building ships, and found the comparison in favour of New-York.”* Such is not our recollection of General Lallemand’s testimony; and in our own recollection we must be permitted to confide, as it is confessed his statement was made in answer to questions that we addressed. We put no questions that could have elicited such an answer. It did not occur to us to inquire whether he, General Lallemand, a stranger, a foreigner—writing and speaking our language imperfectly—having little knowledge of the business of ship-building, especially in its details, and unacquainted with the persons to whom such inquiries could with propriety be addressed,—had *himself* obtained the information in question. We asked as to the information which the houses, in their letter to him of the 10th, had stated *that they then possessed*; and his answer was, that *they assured him* that they had written to the several cities he mentioned, and that the answers which they had received, had satisfied them that New-York was entitled to the preference. The letters of General Lallemand, now before us, seem to us to confirm our statement of his testimony. In his letter to the Deputies, of the 15th April, 1825, General Lallemand says—“*On a écrit pour être informé de ce qui pourrait être fait dans les autres chantiers des Etats Unis.*” “Letters have been written to procure information as to what can be done in other ship-yards in the United States.” We profess no extraordinary skill in the native language of General Lallemand, but we think the phrase “*on a écrit*” would hardly have been used in reference to letters written by himself. On the 24th April, the General writes again to the Deputies, and commences his letter as follows:—“The information obtained in the different ports in the United States, having disclosed no means of

* Report, p. 21.

“ obtaining such ships of war as it would have been necessary to send to Greece, and no ship-builder in any port being able to undertake to build them as soon as in this city, the houses have been occupied in fixing the conditions of a contract, which will probably be concluded to-morrow, for two frigates of the first class.”* The vigour and celerity with which the houses had prosecuted their inquiries, so as to be enabled to ascertain, in the space of eight days, that no person was to be found in any of the ports of the United States, who would undertake the building of the frigates on the terms they wished, will probably excite the astonishment of the public, as it excited our own. To remove our scepticism, we called for proof of the facts that such inquiries had been made, and such information obtained. The good faith of General Lallemand we did not doubt, but we thought it at least possible that he had been deceived. Our suspicions, if unfounded, were easy to be repelled. All that was necessary was to produce the letters which the houses, or either of them, had addressed to their friends in the different ports of the United States, together with the answers which they had received. We, therefore, called for this correspondence. Our demands, verbally made, for these and other papers, being neglected or forgotten, we made a formal requisition† in writing,

* “ Les informations prises dans les divers ports des Etats Unis n’ayant offert aucun moyen de se procurer de suite les batimens de guerre qu’il eut été nécessaire d’envoyer en Grèce, et aucun constructeur ne pouvant *dans aucun port* enterprendre de les construire ausse vite qu’a New-York. on s’est occupé d’établir les conditions du contrat qui sera probablement passé demain pour deux frégates du premier rang.”

† We add a copy of the requisition referred to. We request that the following letters, &c. may be produced :

1. The letter of the Deputies to Messrs. Le Roy & Bayard, written some time in the month of October or November, 1824, and to which their letter of the 7th of December is an answer, (not produced, said to be mislaid.)

2. The letter of the two houses to Mr. Ricardo requesting a credit to be opened, (not produced, its existence denied. See Mr. C’s. narrative, page 13.)

3. The letter of the two houses to the Messrs. Ricardo enclosing a

of which we delivered a copy to the opposite counsel, and which we read in the presence of the arbitrators ; and to this we frequently called the attention of the opposite party and their counsel. Some of the papers we required, after a long hesitation (we refer to the correspondence with the Messrs. Ricardo) were produced ; but on this subject, our call was unanswered. No proof whatever was given, not a single letter was produced, to show that any inquiry was made, any information obtained, in a single port of the United States, except this city, as to the time and expense that would be required to build the frigates, or either of them.* Is the inference unfair or uncharitable, that the facts did not exist, of which the proof was thus withheld ? Again. The houses assert that they had calculated, with the utmost care, all the expenses they were likely to incur, and had examined the subject with the most scrupulous attention in all its details. We do not know that stronger expressions could have been used to mark the vigilance and care with which they watched over the interests of their employers. How was it possible for the Deputies to believe that men who proceeded with so much caution, could be deceived or mistaken in the course it was expedient to pursue ?

statement of their expenditures, referred to in their letter of the 26th of February, 1826, (not produced.)

4. All the contracts, (produced.)

5. All Mr. Ricardo's letters to the two houses, (a correspondence was produced said to be complete but not including the letters above mentioned.)

6. The letters of the Deputies of the 15th October, 1825, of which the receipt is acknowledged in General Lallemand's letter of 19th December, (not produced.)

7. Copies of all the statements and estimates delivered to General Lallemand, and particularly the estimates made in May, 1825, (not produced.)

8. Such information as was received from other ports as to the expense of constructing vessels, &c. (not produced.)

* General Lallemand has renewed before the public the protest he made before the Arbitrators against the production or publication of his letters. That protest we felt, and still feel, ourselves compelled to disregard. The letters of General Lallemand relative to his agency were no more confi-

They had calculated every thing with the utmost care, examined the subject in all its details, and yet it is a melancholy and disgraceful truth, that they had calculated, they had examined nothing ; and the resolution to reject the proposal of Eckford and build the vessels themselves, was not the deliberate judgment of agents anxious to secure the interests of their employers, but the fixed determination of men looking solely to their own. What would be its effects on the interests of Greece they inquired not ; that their own would not suffer they were well persuaded.

On his cross examination, Demon the ship carpenter, admitted that he had neither made, nor been required to make, any estimate of the probable expense of building by days, work. General Lallemand stated that a general expectation was entertained that the vessels would be built more cheaply than by contract, but that no estimate in detail was made or procured. Still the letter was so explicit in asserting that

dential than those of the houses themselves. They were an essential part of a transaction which without them could never be fully understood. The General was permitted to state orally (Rep. p. 19) some of the contents of his letters—as that he had informed the Deputies from time to time of the amount expended, of the bills to be drawn, &c. We must be pardoned for thinking that the letters themselves were the best evidence of the facts communicated. The General says, we doubt not truly, that his letter of the 1st November was the only one shown to the houses, and we are therefore at a loss in what manner to interpret the following passage in a letter from the Messrs. Bayard to the Messrs. Ricardo, dated the — December, 1825. The Messrs. Ricardo had complained that the Deputies had been kept in utter ignorance of the proceedings of their agents, the probable cost, &c. In answer to this the Messrs. Bayard say—“ We are surprised at the remark made in your above letter that you was not informed of what was doing here. We cannot conceive how this happens, *as we have seen letters*, if they reached Messrs. Orlando and Luriottis, which entered into full details ; and we must further observe that notwithstanding the very serious accident which befel their agent here, that we have not done a single thing which this gentleman has not entered into scrupulous examination of ; indeed, we at times conceived almost misplaced.” We should certainly have believed that the letters of General Lallemand were here referred to, but for two circumstances—that the General denies that they were seen, and that they contain no such details as the Messrs Bayard speak of.

all the necessary calculations had been gone into in all the details, that we urged, and continued to urge their production, until it was at last admitted, that no calculation or statement of expenses was in existence; and that it was out of the power of the houses to produce any evidence whatever, of the very scrupulous and detailed examinations which they had asserted to have taken place, and which on a question so deeply concerning the proper execution of their trust, it was their duty to have made.

Lastly, the houses declare that the result of their examinations and reflections, was a conviction that the plan of building by days' work was preferable as the *least expensive*; that they were satisfied that a great saving would be effected, and that the proposals of Mr. Eckford (no other had been made to them) were rejected on account of the large and unreasonable profits which he expected. All this Mr. Bayard now assures us is untrue. The houses did not reject the proposals of Mr. Eckford as extravagant, but "wished that he should build the vessels." They were overruled by General Lallemand; but the chief motive even of his opposition was the time required. As to the diminution of the expense, the great saving which they promised the deputies, they had no such expectations; but on the contrary, believed that the cost would be in fact, though not materially, *increased*.* The last statement of Mr. Bayard, as we are compelled to choose, we confess, commands our belief, except that we doubt whether any opinion was formed as to the probable limits of the increased expense. How far the houses had any wish that Mr. Eckford should build the vessels will soon appear. We did not include this position in our qualified assent to Mr. Bayard.

One of the least excusable omissions in the report of the

* "Notwithstanding the prices demanded by Mr. Eckford, it was the wish of both the houses that he should build the vessels. General Lallemand was opposed to it, principally on account of the time required; the cost of the vessels, in the state of Greece, being considered by him of secondary importance. We were all of opinion that by days' labour the work might be accelerated without *any material* increase of the cost." Exp. p. 9.

arbitrators is. that of the letter from Mr. Eckford to General Lallemand, to which Mr. Contostavlos in his Narrative, p. 56. has so forcibly referred, and which was produced by General Lallemand and read in evidence.* It contained, as Mr. Contostavlos has stated, a direct offer on the part of Mr. Eckford, to build the frigates three months sooner, and for a less sum, than any other person in the United States, competent to give security for the performance of his engagement, would contract for. That this offer was highly advantageous, that Mr. Eckford, from the quantity of materials he had already on hand, and the number of workmen in his employ, could build the ships with a cheapness and despatch that none other could hope to rival, was not denied. It was admitted that the offer, if made at an earlier period, ought to have been agreed to; but its rejection was placed on the ground that the houses had already made their engagements with their respective ship-carpenters. It was for this reason. it may possibly be thought, that the arbitrators abstained from all notice of it. It is, however, to be regretted, that it did not occur to them to state the fact, that the offer of Mr. Eckford had been made, in order to enable the public to judge of the sincerity and probability of the excuse assigned for its rejection. The offer of Mr. Eckford, according to our recollection, was dated on the 15th or 16th of May. It was received before any monies had been advanced, or any materials purchased; and the only impediment to its acceptance was a contract, in the execution of which no steps had yet been taken. This contract our readers will recollect was not for the building of the ships; they were to be built by the houses themselves; but merely for the personal services and the use of the yards of the respective ship-carpenters: and, therefore, the injury resulting to them from annulling the agreement in this stage of the operation, could not certainly have been a matter of difficult or expensive compensation. Can it be believed that the houses, especially when we consider the relations

* This letter appears to be lost, but when we know not; but the substance of it could not have been forgotten, and the accuracy of our recollection has just been confirmed to one of us by Mr. Eckford himself.

subsisting between them, and mechanics looking up to them for constant patronage and employment, would have met any serious obstacles in procuring, on moderate terms, a release from their engagements? Had the Messrs. Bayard and Howland been building, not as agents, but on their own account, how long do our readers imagine that their engagements to their carpenters would have delayed the acceptance of Mr. Eckford's offer, if by such an acceptance they had known that their own interests were to be materially promoted? Our own belief, which we shall not conceal, as to the motives that produced the rejection of Mr. Eckford's proposal, is, that they would have led to the same result, had it been made at an earlier period. It was their fixed determination to avoid that risk, which has since been made the pretext of the exorbitant commissions they have received. Had they contracted with Mr. Eckford, or with any one else, they would have been personally responsible for the whole amount stipulated to be paid. Building, as they did, by days' work, and postponing as they did, the large contracts, until the months of October and November, that is, until they had received more than £100,000 sterling, they incurred no responsibilities which the funds and property in their hands were not more than sufficient to meet. This was a chief motive: that there were others of equal urgency, our readers, when they shall have perused our remarks on the "Disbursements," may not improbably be led to suspect.

3. The houses deceived the Deputies as to the time within which the frigates would be built and prepared for sea, and they withheld from them all information, although it was frequently required, of their probable cost, until (in the language of Mr. Contostavlos) "the period arrived when the interference of the Deputies could no longer avail; until the building of the vessels had proceeded so far, and sums so large had been transmitted, that there remained no alternative, except the entire sacrifice of what had been advanced, or the completion at whatever cost of what remained to be done."

This specification embraces the chief topics of complaint and discussion in the Narrative of Mr. Contostavlos, and he

has exhibited nearly all the evidence on which we relied on the hearing; *no portion of which, however, according to our recollection, have the arbitrators stated or referred to in their report.* We shall not abuse the patience of the public by a repetition of what has been said, but shall content ourselves with a brief statement of the leading facts, and a brief refutation of the defence that has been attempted.

In their letter of the 15th of April, the houses state that the whole eight frigates which the Deputies were authorized to build, could be got ready for sea in six months; and General Lallemand, in his letter of the 16th of the same month, stated that the vessels could not be got ready for sea until the month of November. He, of course, spoke from the representations that were made to him. What conclusions were drawn by the Deputies from these assurances, what confidence they reposed in them, and what importance they attached to them, will appear from the few extracts from their letters which we shall give. In their letter of 14th of May, addressed to both houses, they say—"Agreeably to the instructions that have been given you, we flatter ourselves, that before the reception of this letter you will have decided on the building of the two frigates in question without delay, so that we may hope to hear of *their departure for Greece* about the month of November." In their letter of the 31st of May they repeat the same hope. "We continue to flatter ourselves that the frigates will be able to leave the United States in November, or at the latest, in December." And their letter of the 23d of June contains this explicit declaration. "As to the time that will be requisite for the building of the two frigates, we have already informed you, that, according to the opinion of General Lallemand, we expect to see them finished in the month of November, or December at the latest; and it appears to us, that in no event (*dans aucun cas*) will you exceed this period." And in their subsequent letters for two or three months, they express the same expectations, and urge in strong terms the necessity of this despatch.

The houses, when they commenced the building of the

vessels, had no expectation or belief that they would be able to leave the United States until many months after the period which they had previously stated, and on which the Deputies had fixed their hopes: and yet they permit the Deputies to remain under the delusion which their own assurances had produced.

Captain Chauncey stated, that when he made his contract, it was not expected that the frigates would be ready for sea until the first of March: and Demon the ship-carpenter said; that he informed Mr. Howland that the *Liberator* would not probably be launched until the spring of 1826, though possibly, by great exertions, it might be effected in the month of January.* It can hardly be necessary to inform our readers, that after a frigate is launched, two or three months are still necessary to fit her for sea.

Next, as to the good faith of the houses in disclosing the probable cost. We have already shown that the building of the frigates was ordered on the faith of the estimate of the 7th December: and it is certain, from the subsequent corres-

* The Arbitrators (p. 23 of Report) state this testimony as follows: "He told Mr. Howland that the *Liberator* might *possibly* be launched in January, but perhaps not until the spring following." This is very equivocal and obscure. The reader may *possibly* understand what is meant, and *perhaps* not—he may infer that in the opinion of the witness, the launching in the spring was the most improbable contingency of the two—that the month of January was his first expectation. The meaning of the witness was directly the reverse, and so he at first expressed himself. He stated in plain direct terms that he did not believe that the vessel could be launched until the spring following, and so told Mr. Howland. That on Mr. Howland's pressing the necessity of more expedition, he answered, that possibly, by great exertions, the launching might be effected in January; and this the witness stated in proof of the extraordinary activity and diligence that had been used to enable them to launch the ship so many months sooner than was at first expected. The inference, however, that we should be entitled to draw from this statement was soon perceived, and the witness began to suspect that an error had been committed. He then, as is not unusual, doubted, hesitated, qualified, and ended at last in the very lucid answer which the arbitrators have published, and which he could not be brought to render more intelligible.—And this equivocal answer the arbitrators have given as all his testimony on the subject!

pondence, that the Deputies continued to believe, until a very late period, that the actual would not exceed the estimated cost—making, of course, the necessary additions of the extra sails, spars, armament, &c. which their instructions required, and including the expenses of equipment and outfit, stores, wages, &c., and the commissions of their agents. They were at last undeceived by the appalling letter, as Mr. Contostavlos* has truly termed it, of the 31st of October: and then the operation was instantly suspended, the payment of the further bills of the houses refused, and a resolution taken that one of the Deputies, or some other competent person, should proceed to this country, to ascertain the causes of so unforeseen an expenditure. The letter of the Deputies, addressed to the houses, of the 15th October, is as follows:—

“ As you have written to the Messrs. Ricardo, requesting
 “ them to open you a credit to meet the expenses of building
 “ the frigates ;† in the uncertainty in which we remain as to
 “ the sum that will still be necessary, we send you two letters
 “ of credit, one of £13,000, the other of £12,000 sterling,
 “ in the whole £25,000 sterling ; and we hope that this sum
 “ will be sufficient to provide for all that remains to be done.”

The credits thus transmitted, in addition to the amount before received by the houses, make a sum total of £130,000: this, at the rate of exchange as credited by the houses, would produce about \$600,000. The original estimate was \$247,000 for a single frigate: so that, in the opinion of the Deputies,

* See Narrative p. 17, where this letter is published in full.

† This was one of the letters of which we required the production. The allegation that it was lost would not here answer, as what we required was the copy, which the houses, according to the invariable usage of merchants, must have kept. It was therefore boldly declared that no such letter had been written. Our object in requiring the production was to prove that the houses had written to the Messrs Ricardo to obtain their *unlimited guaranty* of all the bills they might choose to draw, on account of the frigates. This was the nature of the credit they desired to be opened. It is obvious from the terms in which the Deputies express themselves, that this was the fact. Had the letter to the Ricardos specified the *amount* of the credit desired, the Deputies would not have remained in the uncertainty of which they speak.

an additional sum of \$53,000 for each frigate, was sufficient to cover all the extra materials they had ordered, the expenses of outfit, and the commissions of the houses. A stronger proof of the confidence they continued to repose in that estimate, it would be impossible to furnish. It may be incidentally remarked, that it is a proof equally strong, that the Deputies did not believe that they would be exposed to a charge for commissions beyond the rate of mercantile usage. How the Deputies were at last undeceived, is well known to those who have read the Narrative of Mr. Contostavlos. The necessity of mystery and silence having ceased, the purposes of the deception being accomplished—(we speak it plainly, for we feel it to be true, and that the proof of its truth is irresistible)—Extortion issues forth, bold, fearless, undisguised, from the retreats of Falsehood, in which he had sought concealment. In their letter of the 31st October, the houses require the Deputies to provide for the cost of each frigate, at the rate of \$550,000, calculated at par, and demand a deposit, or the guaranty of their own banker, for that portion of this enormous sum which they had not then received. Add the premium of exchange, and the cost of the two frigates is carried to one million two hundred thousand dollars!—double the amount which the Deputies, one fortnight only before this letter was written, had expressed their belief would be required. And yet it is now gravely insisted, that the Deputies never relied on the estimate for which they had written; that they were under no mistake or delusion as to the probable cost of the frigates; and that all necessary information was “fully and seasonably imparted.”* To the force of the remarks which Mr. Contostavlos has made on this subject, we feel it impossible to add, and to his Narrative we refer our readers.†

* Bayard's Expos. p. 9.

† Narrative p. 19. As a further proof, if further can be required, of the belief of the Deputies as to the cost of the frigates, and of the embarrassment to which they were subjected in consequence of its unexpected increase, we request the attention of our readers to the ex-

It is not our fault if these charges of deception and intentional concealment shall appear to derive a new force from the defence that is attempted.

We begin with the arbitrators, who seek to vindicate the *houses against accusations which they never mention to have been preferred; and the evidence in support of which, they have entirely omitted.* According to the arbitrators, the houses and General Lallemand were themselves, when the building

tracts that follow, from a letter of the Messrs. Ricardo to Le Roy, Bayard & Co. dated the 30th Nov. 1825; the letter was written immediately after the receipt of the last bills that were paid:—"We have received your letters of the 22d and 31st October, and find to our astonishment that you have drawn for £12,000 over and above the credit we have given you. Were it not for the great respectability of your house, we should have hesitated accepting the bills, for we cannot possibly conceive how these frigates can require so extraordinary a sum as £155,000 (sterling). We have conversed with the Deputies on this subject, and it appears that you could never have rightly understood each other, as they calculated the last credit we sent you would cover all expenses. This call for an additional £25,000, is an unexpected and embarrassing occurrence."

We add some extracts from a subsequent letter of the 14th Dec. What may have been the motives or conduct of the Messrs. Ricardo, in their dealings with the Deputies, we know not, nor do we conceive these have any thing to do with this controversy. The good sense and truth of their reasoning we think it impossible to deny. "We wrote to you on the 30th Nov. of which letter we now beg leave to send a copy. We there expressed our astonishment at the very large sum of money you required, and we observed we expected it would be more than sufficient to complete your undertaking. We have since had a long conversation with the Deputies on the subject, have read all the correspondence between you, and find to our regret and surprise, that great as the amount is for which you have already drawn, it is insufficient for the object; and that you request to have funds deposited in the hands of bankers with whom you are in correspondence, to enable you to finish the frigates, which you estimate will require \$550,000 each. We cannot help expressing our unequivocal astonishment at the magnitude of the sum. We cannot understand how it is possible to expend above £220,000 sterling in the construction and fitting out two frigates. It is a most extravagant price, and could not have been contemplated when the commission was entrusted to you. We do not speak loosely, for we have made many inquiries on the subject. The estimated cost of fitting out

commenced, under a great delusion as to the probable expense of the ships.* They "have been disappointed in their early sanguine calculations," and the frigates "have no doubt cost much more than they anticipated." And as to their neglect to make or transmit the usual estimates, they mean to excuse them, on the ground that, "as soon as the plan of building by days' work was adopted, it was utterly impossible to calculate, with any degree of precision, the final amount." Mr. Bayard takes, as is not unusual with him, a much bolder flight, and disdains to cover himself under the kind excuses and apologies of the arbitrators. He denies that there was any neglect, concealment, or error. The Deputies, he contends, were in possession of all the information that was necessary to regulate their future operations. An approximate calculation, such as they desired, was made and sent to them. In short, every circumstance was distinctly communicated,

"vessels of war for the British navy is £1000 sterling per gun. By the enclosed letter from one of the first and most respectable ship-builders in London, you will see what might have been done here. How is it that in America, where wood, the principal material, is so much cheaper, the cost of building a frigate should be more than double what it is in England? It is a matter which passes our comprehension; we trust to have it satisfactorily explained. In December last you sent to the Greek Deputies, the valuation of the cost of a frigate, which amounted to \$247,000. In this was included the greatest part of the equipment, and it was on this estimate, and from the inquiries they made here, that in the March following they entrusted to you the commission to purchase, or if you could not purchase, to build two frigates."—"When you found that the expense was likely to be so much greater, ought you not, before you commenced the undertaking, to have informed them of the maximum of the funds which would be required to complete it? You knew the state of affairs in Greece; the urgent demands of their government, that the last instalment of the loan was in October, and notwithstanding all this, it is only at the end of November that the Deputies here are made acquainted that the frigates, which upon a reasonable estimate they could never have considered at above £60,000 each, will require together the enormous sum of £283,000. How was it possible for them to foresee this, or how could they guard against so unlooked for a result?"

* Report, p. 63, 4.

from which they could have inferred the enormous expenditure that has occurred.* Either of these defences, if true, may be satisfactory—but to adopt them both, is impossible. They are manifestly and utterly inconsistent. The arbitrators mean to say that the houses did not deceive the Deputies, for they were themselves deceived. They did not furnish an estimate, because none could be made. Mr. Bayard says that neither the houses nor the Deputies were deceived, the expense was known at the commencement, and an estimate was furnished, by which every thing was disclosed. Mr. Bayard deserves at least the praise of consistency. The defence on which he now places himself before the public, is the same on which his house relied in their correspondence with the Messrs. Ricardo; and we cannot illustrate more strikingly the contradiction subsisting between him and his apologists, than by a passage from one of the letters in that correspondence. “We believe it is true,” say the arbitrators, “that the “New-York houses and General Lallemand have been dis-
“appointed in their early sanguine calculations as to the ex-
“pense of these ships. They have, no doubt, cost much more
“than Gen. Lallemand and the houses anticipated.” p. 63.
“The cost of the vessels,” Messrs. Le Roy, Bayard & Co. assure their correspondents, “was known from the very be-
“ginning; and the estimates transmitted will exceed, in all
“probability, their actual cost.” (*Letter to Messrs. J. & S. Ricardo, 19th January, 1826.*†)

* Expos. p. 8.

† This letter contains the following most astonishing passage, for astonishing it must appear even after all that has occurred: “In reply-
“ing to your respects of 30th of November, we cannot but express our
“surprise and regret that you should not have been informed regarding
“the cost of the vessels building. Immediately after the arrival of Gene-
“ral Lallemand, we called on our principal builder, then constructing
“two frigates of the first class. The price he asked we imparted to the
“committee (the Deputies), and in stating the sum at \$550,000 for each
“vessel, we expressed the hope to construct them for less in a shorter
“time.” Mr. Eckford (the principal builder) never did demand \$550,000
as the price of each frigate; nor in any of the letters of Messrs. Le Roy, Bayard & Co. to the Deputies is there any mention either of this

The apology of the arbitrators, as it is disclaimed by those whom it was constructed to protect, we might with propriety refrain from considering ; but it is so extraordinary, that it calls for and justifies some remarks. Admitting that the houses were deceived as to the probable cost of building the vessels when they commenced the operation, and have been disappointed in their sanguine calculations, did it not occur to the arbitrators to inquire how far this error was excusable? how far it was to be imputed to their own culpable neglect in the omission of those inquiries, which, as faithful agents, bound to manage the *concerns of their employers* with at least the same *care and diligence as their own*, it was their duty to have made? But from the nature of the plan which the houses adopted, it was utterly "impossible to calculate, with any degree of precision, the final amount;" and therefore it seems they were excused from making any estimate or calculation whatever! What difficulty existed in this case, that does not exist in every other? It is always impossible to ascertain, with precision, the final amount of contingent expenses: but does it therefore follow, that a probable estimate cannot be made, and ought not to be made, before they are incurred? Were not the ship-carpenters as competent to furnish such an estimate for the use of the houses, as Mr. Eckford to make one for his own, as he must have done when he offered to contract? Had the houses been called to act, not as agents, but contractors, would they not have ascertained, by the most careful inquiry, and with the most minute accuracy, the probable limits of the expenses they would incur, in order to guide them in the price they should require? Would they have possessed any means for making these inquiries as contractors, that were denied to them as agents? To omit this previous diligence, had they been acting on their own account, would have been most blameable imprudence; but the

sum, or of the prices which Mr. Eckford actually asked, nor any statement or pretence that this or any other sum had been demanded by any one. Yet all this is addressed to the Messrs Ricardo in *London*, who, by inquiring from the Deputies, were sure to ascertain that—— It baffles comprehension.

omission, since they were acting as agents, (such is the doctrine of the arbitrators,) was proper, justifiable, and even necessary.

With Mr. Bayard the ground of controversy is very narrow, and shall soon be traversed. He says the Deputies had full and seasonable information of the cost of the frigates, because General Lallemant communicated to them the prices which Mr. Eckford had demanded;—and from these they ought to have inferred an expenditure at least equal to that which has occurred; that is, the Deputies ought to have inferred, that the cost of each frigate would largely exceed half a million of dollars, because the price of \$377,000, demanded by Mr. Eckford, had been rejected by the houses and General Lallemant as extravagant, and the plan of building by days' work adopted in preference, from a conviction that a great saving would result, and for the avowed purpose of protecting the Deputies against the large profits that Mr. Eckford was accustomed to exact. And the Deputies were under no delusion as to the ultimate cost: they had all the information necessary to guide their future conduct; because in their reply to General Lallemant, they approve of the conduct of the houses in rejecting the proposals of Eckford, and censure his prices as exorbitant. Let it be remembered, that it is not now pretended that any other communication was made to the Deputies, either by General Lallemant or the houses, from the arrival of the General in the month of April, until the 31st of October, from which the Deputies could have inferred that the cost of the frigates would exceed the estimate of the 7th of December, upon which they had ordered them to be built. And let it also be remembered, that on the 31st of August Messrs. Le Roy, Bayard & Co. declare to the Deputies, that an approximate calculation of the cost was impossible to be furnished; and that on the next day, Captain Chauncey delivered to the houses an estimate *in detail*, which, if communicated, would have furnished all the information that the Deputies had in vain solicited.*

* Narrative, p. 10. In page 64 of the Report the arbitrators say, "the Deputies were apprised of the offers of Mr. Eckford, at the

4. The agreement between the Deputies and the houses, as clearly to be inferred from the correspondence, was, that confirmed credits should from time to time be transmitted, as the exigencies of the work might require : but if, in the intervals of those credits, the funds should be exhausted, the houses should be permitted to draw, to relieve themselves from the necessity of making advances, for such sums as their immediate expenses required. We contended that the houses had grossly

commencement, and said they were inadmissible *as to time*." And they print the last words in italics, with the obvious view that their readers should infer that the objections of the Deputies were confined to the time required, and that they did not regard Mr. Eckford's price as inadmissible. This is positively disingenuous and unfair. In their reply to General Lallemant, the Deputies say—"We received your letter of the 15th of May, in which we see the *exorbitant* prices which your builders have demanded." Do the arbitrators mean to say that the Deputies were willing to pay a price which they deem *exorbitant*? It is frequently insinuated in the Report, for the arbitrators insinuate much more than they assert, that expense was a subordinate consideration in the minds of the Deputies, and that expedition was the great object. If the work could be accelerated, they were not scrupulous as to the cost. Had the arbitrators perused with any attention the correspondence of the Deputies, they must have drawn an opposite conclusion. Economy is the topic on which they dwell with most frequency, and with most solicitude. We believe there is not a single letter from March to October in which they do not inculcate its necessity; and the following passage shows that it was not a subordinate, but the paramount consideration: "As zeal, activity, and *above all things, economy*, (surtout l'economie) are the points the most essential to the success of the enterprise, we shall be highly gratified to find that in respect to these points you have exceeded our expectations." (Letter to Le Roy, Bayard & Co. 10th March, 1825.) We must bestow a few words on Mr. Bayard. Mr. Contostavlos had said, that had the Deputies received seasonable information of the cost of the frigates, and of the time that would be required to build them, the funds transmitted to this country might have been applied to other objects. "A fleet of sloops of war might have been built or purchased, and sent to the succour of Greece, before the opening of the last campaign: *Missolonghi would not have fallen*." As to the cost, we have already seen Mr. Bayard's answer. As to the time, he says, that in General Lallemant's letter of the 16th April, the impossibility of placing the ships at the disposal of Greece during the approaching campaign, was plainly announced, and that the same fact was communicated in the letter of the houses of the 15th of

abused the authority thus given them, by drawing without confirmed credits, when they had large funds in hand, and on the false allegation that those funds were exhausted, or about to be so. The evidence on this subject, our readers will find in Mr. Contostavlos' Narrative, p. 8, 9, and Mr. Sedgwick's Refutation, p. 37, 38, 39.

The facts that the houses drew, without confirmed credits, for £75,000 of the £155,000 that they have received, and that each draft was accompanied with a false declaration of its being necessary to cover advances, are undeniable. Nor are we aware that they have been denied either by the arbitrators or by Mr. Bayard. We repeat, *we nowhere find it denied that the houses, in their own letters, place their right to draw the bills drawn without a confirmed credit, on the allegation that the funds were required for immediate use, and to protect them against advances; nor that this allegation is in every instance untrue.**

That the houses should have persisted in the course of drawing without a confirmed credit, and when they had large

the same month. (Bayard's Expos. p. 8.) This reply involves a very artful perversion of Mr. C.'s meaning. Mr. C. writing in September 1826, in speaking of the last campaign, meant the campaign opening in the spring of that year. General Lallemant and the houses writing in April 1825, say the ships could not be placed at the disposal of Greece in that campaign—meaning the campaign then commenced, the campaign of 1825; and Mr. C. never accused them of having said otherwise. This explanation being made, the original statement of Mr. C. recurs upon us in all its force. His "pathetic lamentation," of which Mr. B. speaks, was not a fabrication, designed to inflame public prejudice, but a resistless conclusion from the facts of the case. Missolonghi fell in March 1826; and most assuredly, by a proper application of the funds which the houses had received, that fall might have been prevented, and probably in the very manner that Mr. C. has suggested. It is not, therefore, the fault of Mr. C., if the misconduct of the houses shall remain connected in public opinion with one of the "most signal calamities that has yet overtaken the Greeks." Considering the situation and feelings of Mr. C. as a Greek, we think he has expressed himself with singular moderation.

* By consulting the interest accounts published in the Appendix, our readers will see the extent to which these allegations were untrue.

funds in hand, has always appeared to us one of the most extraordinary and suspicious facts that the controversy has disclosed. We wish to draw to it the attention of our readers, as we believe its importance is by no means sufficiently understood.

The houses commence the building of the ships with funds in hand, the produce of the first confirmed credit, to the extent of more than \$230,000, a sum amply sufficient to cover all their advances and responsibilities for many following months. During this period they might have written for and obtained new credits for such sums as they knew they would require. Such credits the Deputies had engaged to transmit. That they had the *ability to perform this engagement* the houses knew; that it was their sincere *intention to perform it*, they certainly believed. Why then is not the plain course pursued of applying for additional credits, and waiting to draw until they are received? By acting thus the house would not have delayed the operation a single instant; they would have been under no necessity of making advances; *they would have obtained the guaranty of the Messrs. Ricardo on the whole amount of their bills, and they would not have been reduced to depend on the mere promise of the Deputies, or the faith of the Greek government for a single dollar of the expenditure.* If a risk of this nature attached to any part of the transaction, it was applicable solely to the bills that were drawn without a previous confirmation. Why then did the houses deprive themselves of a security they must have valued, and incur without necessity a risk they must have dreaded?

The solution is this, had they applied for additional credits they must have specified the sums they required, and by doing this the meditated cost of the frigates would have been prematurely disclosed. By drawing without a previous communication of the sums required, this disclosure is avoided, and against the risk of this operation they guard themselves, by remitting their bills for collection instead of selling them, and by omitting to draw against them (as we firmly believe,) until they were informed of their acceptance. It will be said, for the importance of what we are urging we know will be felt

and an effort to reply probably be made, that in their letters to the Deputies the houses frequently mention the irregularity of drafts not sanctioned by a previous credit, and express in strong terms their wishes that confirmed credits should be remitted. They do so, but in no single instance do they specify the amount of the credits they require, and they refuse to do this, notwithstanding the Deputies at an early period declare their willingness to open them a credit to the extent of the sum that the frigates would require. On the 29th of June the Deputies transmit to each of the houses a confirmed credit of £15,000 sterling, and in their letter of advice they express themselves as follows: "Had we been able to calculate the sum you " would require for the building of the frigates, and could tell " when the money would be necessary, we should not have hesitated to augment the credits which we open this day;" evidently meaning that they were willing to augment the credits to the extent of the necessary expenditures as soon as they were informed of their amount. In what manner do the houses meet this communication? Do they remove the ignorance of which the Deputies complain? Do they inform them what further sums they would require, and when the payments would be necessary? No, they do not even acknowledge the receipt of the credits; and make no reply to the letter; but in the month of September they address themselves to the Messrs. Ricardo and request a credit to be opened to cover their bills *without any statement or limitation of the amount*, and then proceed to draw still with large funds in hand, and before the credit they ask is received. We now submit it to the serious consideration of our readers, especially of our mercantile readers, whether this conduct admits of any other interpretation than that we have suggested.

We have now enumerated the principal grounds on which we contended that the houses were not entitled to any recovery beyond a mere indemnity for actual and fair disbursements. There are others connected with the illegality of the enterprise and the deception practiced by the houses in relation to it that will be hereafter considered. But if those we have stated were supported by proof (whether they were so the public are

now enabled to judge) it will hardly be doubted that they were conclusive in law. That agents, negligent and unfaithful, careless alike of the instructions and interests of their employers, are entitled to a reward, we presume will not be asserted.

We shall briefly state the reasons on which, *on the supposition that the houses were entitled to any commissions*, we claimed a reduction of those that were charged. We conceived that the agency of the houses was strictly mercantile in its character, and that the rate of their compensation was therefore to be determined by the rules that mercantile usage has established. It was as merchants that they were employed and trusted, it seemed to us a necessary consequence that as merchants they were to be rewarded. The purchase of military and naval stores of every description, is confessedly a mercantile operation; equally so is the building of ships. We were unable to imagine that these operations lost their character by their union, and ceased to be mercantile because the stores to be purchased, were to be placed on board of the ships to be built. The building and equipment of a frigate is nothing more than a union on a large scale, of various services and duties, all of which merchants are accustomed to superintend or discharge. If these views had prevailed, mercantile usage applied to the commissions of the houses would have reduced them to 5 per cent. including the commissions on the bills which they had drawn, and this, merchants would have esteemed not merely a sufficient but a very liberal compensation. The saving to Greece would have exceeded \$40,000, and if applied to the purchase of provisions, might have rescued thousands of our fellow-beings from misery and famine. But the arbitrators were most unfortunately of opinion that the houses of Le Roy, Bayard & Co. and G. G. & S. Howland were not merchants, so far as they claimed to be enriched, no matter with what consequences to others, out of the resources of Greece. They were clothed with a much more imposing character, their duties were vastly more responsible, and it would have been a degradation and an insult to have applied to their services those rules by which regular merchants are content to be governed. They were "Diplomatic Agents in

"a very delicate and difficult affair with our government;" and it would have been absurd therefore to have confined their claims within the narrow limits of mercantile usage. To be sure, it is somewhat unusual to speak of the commissions of "Diplomatic Agents," and still more so to compensate such agents in any form at the rate which the arbitrators have allowed. Had Mr. William Bayard and Mr. Gardiner Howland been our ambassadors at the court of St. James; had they by their diplomatic skill and address settled our commercial difficulties with England and secured the West-India trade on terms of perfect equality; they would not have received from the gratitude of their country a sum at all approaching to that which the arbitrators have allowed them as the Diplomatic Agents of two Greek frigates! Had the houses therefore presented themselves solely in their political character, we should without difficulty have encountered and defeated their claims; but when we attacked them as "Diplomatic Agents," they produced their accounts, pointed to their commissions, and assured us with much humility that they were merchants. And when we seized them as merchants, and as we thought had stripped them naked, the arbitrators rescued them from our grasp, put on their robes of ambassadors, and taught them to speak with diplomatic contempt of commerce and all its usages. Theirs we found "was a special confidence of a political as well as a commercial character;" and this undefined and undefinable union of opposite characters entitled them to charge just what they pleased, and justified the arbitrators in allowing just what they charged. Their trust was special, their claims were special, and most special are the reasons invented to defend them. We may seem to speak lightly; such are not our thoughts. We know not, that injustice is ever more revolting, that it ever provokes more indignant feelings than when with grave and plausible sophistry it seeks to deceive our understandings, whilst it robs our pockets.

But since it is the alleged diplomatic character of the houses which furnishes their protection against the most serious charges we have made—the diplomatic nature of the trans-

action which forbids us to apply to it the principles of mercantile usage—let us inquire what are the evidences of this official distinction and merit.

The arbitrators say,* “It was then proven that after the joint efforts of Gen. Lallemand and the two houses to purchase frigates had proved abortive, and *after the reconnoissances political and diplomatic which the object and the occasion demanded*, the agent agents) determined to build two frigates.” This is a plain assertion that proof was given before the arbitrators, that negotiations such as the occasion demanded were carried on between the houses, or Gen. Lallemand, and our government. What the occasion demanded and what the houses actually effected, we learn by a subsequent part of the report, was nothing less, than to ascertain unequivocally “that the government would secretly favour the enterprise; and that it would meet with no opposition either from the government or laws of the United States.” The arbitrators, avowedly from motives of delicacy strikingly resembling that of the houses themselves, have not thought proper to convey this idea in the form of an assertion, although they have expressed it as plainly as language could do it. We will not stop to inquire why it was not thought necessary to ascertain whether the negotiation was carried on by General Lallemand, or the houses, and if exclusively by the General, how it could effect the question of commissions. It is enough to repeat our solemn declaration that there was no evidence before the arbitrators of any negotiation whatever between the houses or Gen. Lallemand, and the government. We do not mean to say, merely, that there was no evidence competent to establish such a negotiation, but that there was no evidence of any kind on this point, nothing that was brought forward or claimed to be such evidence.

But we need not confine our inquiry to the evidence before the arbitrators. The pretensions advanced in favor of the houses in relation to this point are not only not without evidence to support them, but are contradicted by the strongest

* Report p. 17.

evidence which the nature of things admits. The President of the United States had no power to suspend or interfere with the operation of the law, and consequently he could never have given the pretended assurance that the enterprise would encounter no obstacle in the government or laws of the United States, and such an assurance, if given, would have been of no value.

But if no such assurance could be obtained, was it not at least ascertained that the President would "refrain from any exertion of authority" against the enterprise? This was not the pledge which was wanted, nor that which it is pretended was given. But if the diplomatic negotiation of the houses is to be reduced within such narrow limits, let us inquire into the necessity and utility of the supposed pledge of the President. We are informed by Mr. Bayard that ships of war destined for the service of foreign governments were building in every quarter of the union; and that although Spain was represented in this country by a vigilant minister and by consuls in every port, the government of the United States had in no case seen fit to interfere. Whether our government was actuated by sympathies towards the Grand Sultan more efficient than the vigilant representatives of a friendly power—or whether it was stimulated by hatred towards a christian people struggling for freedom and religion against an infidel despotism, is not quite certain;—but it is certain that there was in the councils of our country a deadly hostility and an active espionage against every effort that might be made in favor of Grecian emancipation; and that nothing short of the diplomatic talent of the houses could appease this hostility, or elude its observation.

But if the case before the arbitrators was entirely barren of evidence on this point, there is no lack of it in the defence of Mr. Bayard.

It was very important to this gentleman to give an innocent interpretation to that part of the letter of the houses of the 15th of April, in which it is asserted, to use the language of Mr. Contostavlos, "that no law of the United States would

be violated, "and no risk incurred by the building and equipment of these frigates." For this very important purpose, this gentleman has chosen his own time for the alleged negotiations with our government, and he must now abide by his election. According to Mr. Bayard, supplies in ships and munitions of war had been supplicated from most of the European powers, "and the impossibility of granting them without violating the laws of neutrality, was the ground on which these applications were refused." The Greek deputies being well aware "that the laws of nations were binding on this government," were anxious to ascertain "its feelings and intentions in relation to the construction of ships of war in the ports of this country, for the service of the Greek navy."* The object of the deputies being thus understood by General Lallemand, "and that gentleman not choosing to rest on the presumptions afforded by the passing occurrences" mentioned by Mr. Bayard, "*addressed himself to higher sources of information, and by personal inquiries* ascertained to his entire satisfaction that the operations about to be undertaken would meet no opposition from the government or laws of the United States." "Upon his return to New-York, they *were all* equally satisfied upon that point," "and after an informal conversation with a professional friend," Mr. Bayard "ventured to adopt the opinion that, *as a matter of right,*" they "could build the ships and send out their armament as cargo." Then Mr. Bayard emphatically adds, "*this is the substance of our information to the deputies.*"

There is some confusion in Mr. Bayard's argument, arising from an attempt to reconcile his own explanation of the letter in question, with that of his counsel ; but there is no ambiguity in his statement of facts. It most clearly appears that Gen. Lallemand went to Washington, and by personal inquiries ascertained from the Executive, to his entire satisfaction, that the operation would meet with no opposition from the government or laws, *and returned to New-York before the letter was*

written. But unfortunately for Mr. Bayard, Gen. Lallemand is precisely at issue with him on this point.

During all this critical period, in which, according to Mr. Bayard, the government was seduced into an agreement to violate our neutrality and the law of nations, the General, according to his own statements, was occupied in the most innocent conferences with the houses at the city of New-York.

Gen. Lallemand arrived from Liverpool at New-York on the 10th of April, and delivered the letter of instructions of which he was the bearer, on the 12th, and he was in conference with the houses every succeeding day until after the letter of the 15th was written. All this will appear by his letter of the 16th, of which we give the following translation :

New-York, 16 April, 1825.

“ *Having arrived at New-York Sunday last, the 10th inst.*
 “ *near evening, I saw Messrs. Bayard the next day but one,*
 “ *and gave them the two letters of credit of £25,000 sterling*
 “ *each, addressed by you to that house and Messrs. How-*
 “ *land, as well as your letters, accompanying these letters of*
 “ *credit. Tuesday, and the following days, we all met,*
 “ *Messrs. Bayard, Howland, and myself, to consider the best*
 “ *means to effect the design indicated by the instructions of*
 “ *your government and by your own. It results from all*
 “ *these investigations, (renseignemens,) even to this day, that it*
 “ *is impossible to obtain from the government of this country*
 “ *the means of action which would be so important for the*
 “ *cause of Greece in the ensuing campaign.*”

By the means of action here spoken of, the General doubtless refers to the impossibility mentioned in the letter of the houses, of trafficking with the government by the purchase of its ships or timber.

But for one unfortunate expression in Mr. Bayard's Exposition, any thing might have been supposed in his favor, at least by his friends. It might have been possible, and therefore credible that the government came to New-York to con-

fer with Gen. Lallemand ; but it is certain according to Mr. Bayard that the General left the city, for *he returned to it*. It is hardly necessary to confirm the statements of Gen. Lallemand by referring to the respective circumstances under which he and Mr. Bayard wrote.

Such were the "*reconnoissances, political and diplomatic,*" the existence of which the arbitrators did not hesitate to assert, but of which, from motives of delicacy, they could not "*weigh the evidence*" ! Such is the want of "*delicacy and discretion,*" which, as the counsel allege, *we* have manifested towards the general government. Such, to use their language, have been our "*efforts to goad the houses into the disclosure of confidential transactions*" ! Such is the self-devoting silence, such the chivalrous spirit of the houses, by which they choose to sacrifice themselves, rather than "*disregard the injunctions of prudence and honor.*"

There is a wide distinction in relation to this subject, which we hope will not be forgotten, between the executive and legislative branches of our government. What we have written has no relation to the act of Congress under which one of the frigates was purchased. It is not pretended or supposed that the houses had any influence or knowledge in relation to this transaction. It would hardly do to swell their claims of political influence and favor so as to embrace a large majority of the Senate, and nearly every member of the House of Representatives. If congress had thought fit to assist the Greeks, they would have needed no protection from the "*delicacy,*" "*discretion,*" or "*honor,*" of the houses. We will not pretend to assert or insinuate that the act in question had any other object than appears upon its face ; but if it did originate from motives to favour Greece, and efface the dishonor of the country, we may venture to ask, whether there be an American citizen who dare impeach them ? We entertain the most profound respect for the pacific policy of our government ; but if this horrid war against every thing that can endear existence, had been considered an exception ; if the supplications of that afflicted people, passing by the politic cabinets of Europe and addressed to this country, as the natural avenger of their

wrongs, had been answered by an immediate declaration of their independence, and an efficient pledge for its establishment, we cannot believe that this nation could have withheld its universal amen ! Nor can we doubt that they would have repeated it when the cimiter fell, as it must have soon fallen from the relaxed grasp of the Turk, and the remnant of that gallant and devoted race was seen gathered together, their smoking temples not yet rebuilt, in the open temple of the heavens, to celebrate their emancipation, and invoke the blessings of God upon their deliverers.—Such are not the wars of ambition, and such are not their triumphs.

But let it be that there is throughout our country, as there ought to be, a deep-rooted love of peace and dread of war ; let it be that the maxims of prudence would have prevailed over the impulses of feeling, and that no motives of humanity however imperative would have been thought sufficient to authorise our entrance into a European war ; still we feel sure that any interposition short of actual hostilities or a violation of neutrality would meet with universal satisfaction. We may be permitted to ask from our government, and we want nothing more, an honorable expression of the national feeling. We are under heavy obligations to humanity, to freedom, to religion ; and if possible, there are claims upon us not less importunate, which affect our character as American citizens.

Mr. Contostavlos expressed his doubts whether the arbitrators would choose to defend their award on the ground of the pretended agreement with General Lallemand. These doubts are solved. On this agreement the arbitrators have chosen in part to rest their defence ; and that the defence is valid, the author of the Report exerts all his ingenuity to prove. For the associates of Judge Platt, an excuse, and a satisfactory excuse, is readily to be found. On this point, as a question of law, they submitted to his authority. But for Judge Platt himself, what apology is to be made ? Is it possible that he was himself deceived ?—that he had any confidence in the reasons that he has so gravely stated ? How unpleasant is the dilemma that, without a sacrifice of his reputation and judgment as a lawyer, renders it impossible to defend his conduct as a man !

It is by no means our intention to enter into a full discussion of this subject. The weakness and absurdity (the terms are not too strong) of the pretences that have been urged to establish this agreement, have been already sufficiently, and we believe, in the opinion of the public, very clearly exposed.* One or two observations, however, we must be excused for adding.

It is admitted, that the power of General Lallemand to treat with the houses on the subject of their commissions, was not derived from the terms of the instructions. It is implied as incidental, and necessary to the exercise of the powers expressly given. Without such an implied power, it is said that “the main object of building and equipping the frigates, as soon as possible by the persons, and in the manner contemplated by the Deputies, could not have been carried into effect.” To have required the houses to write to the Deputies on the subject of their commissions, and to have waited their answer before they commenced their agency, would have occasioned a delay “utterly ruinous to the object and designs of the Deputies.” Nor could this “ruinous delay” have been prevented by a transfer of the agency to other merchants. General Lallemand had no authority to do this. “He came addressed exclusively to the two houses, and if they declined, he could make no contract with others without new powers.” It results as a necessary consequence, that the only means of preventing the enterprise from being defeated by delay, was to vest General Lallemand with the power of settling the commissions of the houses by previous contract. The power of thus contracting with the houses was necessary, indispensably so, to be vested in some person in this country; and it could be given to no person with such propriety as to General Lallemand, “who was sent here to represent the Deputies.”† We believe that this is a very fair statement of the reasoning of Judge Platt; and we hope our readers will

* Refutation, p. 27, 8, 9, 30.

† Report, p. 54, 5.

ascertain by actual comparison, whether it does not deserve this character. If this reasoning, therefore, when examined, shall be found to be weak and contradictory ; if, when pursued to its legitimate consequences, it lands us in absurdity,—we are not to be blamed.

The first assumption which the reasoning involves, is, that there existed a necessity for a previous agreement on the subject of commissions. The supposed necessity is the basis of the whole argument. *It is because the act was necessary to be performed ;* because without it “the main object of the building,” &c. could not have been carried into effect, that the power is created.

But in what, do we ask, did this necessity consist ? Whence did it arise ? Had no previous agreement been made, would the houses have lost all right to compensation ? or would the Deputies have been liable to such demands as their agents might choose to urge ? No : nothing is more certain than that these consequences could not have resulted. Had there been no express agreement, the law would have implied one, and the houses would have been entitled to a fair and reasonable compensation, proportioned to the nature of the duties they were required to perform, and of the risk they were expected to incur. Did the houses desire more than this ? Did the arbitrators wish that they should receive more ? It may, however, be said, had there been no previous stipulation, the houses would have been compelled to accept the same commissions that merchants usually charge ; and this, considering the extraordinary nature of their agency, the difficulty and delicacy of their trust, would have been highly unjust. But if the facts supposed existed, this consequence would not have followed. The houses would not have been limited to the ordinary mercantile commissions. Judge Platt himself refutes the objection. He declares that the agency of the houses was extraordinary in its character ; so much so as to constitute a case not governed by commercial usage : and upon this ground he decides, that without an express stipulation, the houses were entitled, as a fair and reasonable compensation, to commissions far exceeding those that are alone acknow-

ledged by mercantile usage. In saying this, Judge Platt does not seem to be aware that he crumbles into atoms his whole argument on the implied power and silent agreement of General Lallemand. He demolishes its foundation. He forgot that the claims of the houses were placed on incompatible grounds, in his anxiety to defend them on all. Where the commissions are sought to be defended as fair and reasonable, though far exceeding such as are usually allowed, a special agreement is declared to be unnecessary to authorise the houses to charge them ;—but when the same commissions are to be gathered as the fruits of an express contract, the necessity for the existence of such a contract becomes so imperative, that without it we are assured “ the main object of the building and equipment of the frigates could not have been carried into effect.”

We anticipate, however, a reply—a reply which the argument of Judge Platt was not improbably meant to indicate—admitting, we shall be told, that without an express stipulation, the houses would have been entitled to reasonable commissions ; still they were not bound to trust to the contingency that such would be allowed. They had a right to secure themselves by a previous stipulation ; and if, without a special agreement, they were unwilling to proceed, the necessity that General Lallemand should have the power of concluding it instantly arose, otherwise all the evil and ruinous consequences on which the arbitrators have dwelt must have ensued, since “ Gen. Lallemand was addressed exclusively to the two houses, and had no authority to address himself to any other.”

It is from the inability therefore of General Lallemand to entrust the agency to other persons, that his authority to contract with the houses is deduced. It is on this fact, it is evident, that Judge Platt meant to lay the stress of his argument ; yet we hope to render it evident, it is this very fact that is decisive to show that the power so boldly implied, was never intended to be given, and without injustice and absurdity could not be inferred. Had General Lallemand possessed the right of transferring the agency, the implication of his right to contract for commissions would have been far more reasonable.

The power is given to prevent the ruinous delay that must have occurred had the houses refused to undertake the agency until the rate of their commissions was settled. But suppose the commissions claimed had been such that General Lallemand, instead of remaining coldly silent, had felt it his duty to censure and reject them, must not the same consequences have ensued? General Lallemand had no authority to address himself to other houses." The deputies must therefore, have been written to, and the whole enterprise must have been suspended until their assent was obtained either to the commissions demanded, or to the appointment of other agents. It is manifest that the dissent of General Lallemand from the commissions claimed, must have led precisely to the same mischiefs as his want of power to agree to them. To prevent these mischiefs, therefore, it is not enough to give the power, but General Lallemand must be compelled to exercise it. Compelled to exercise it by assenting instantly and unconditionally to the terms that the houses might please to dictate. And thus the implied authority of General Lallemand at last resolves itself into a power unlimited and discretionary in the houses to *fix themselves the amount of their own compensation*, and this is the power without which Judge Platt assures us, the main object of "building and equipping the frigates according to the intentions of the deputies, could not have been carried into effect!"

One observation more on this topic, and we shall have done. It is from the silence of General Lallemand that Judge Platt infers the agreement as to the commissions, and that the law frequently attributes to silence the effect of positive assent, we do not deny; but it never has this effect except when it is followed by an acquiescence in the acts which the agreement contemplates to be done. By what acquiescence was the silence of General Lallemand followed? Not by that of the deputies, for they had no knowledge of the facts, the claims of Mr. Bayard were never communicated to them; who then acquiesced? General Lallemand, Judge Platt gravely assures us. General Lallemand? Could he have done otherwise? Had he any right to prohibit? Does not

acquiescence imply this right? Is not "an omission to exercise it," the very meaning of the term? That it is absurd to speak of the acquiescence of a party in that which he could not prevent, is evident not merely to legal apprehension, but to that of common sense. What could General Lallemand have done? He could not recall the powers of the houses, for they were not derived from him. He could no more annul their commission than they could his—that he had no authority, express or implied, to supersede them, Judge Platt himself, not merely admits, but asserts, "for he was addressed exclusively to the two houses, and could not address himself to any other."

In what light this subject ought to have been considered by the arbitrators, we shall state in a few words. As neither the instructions nor the letters of the deputies contain any thing in relation to commissions, it is clear that they did not believe that a special agreement on the subject was necessary, and as they do not provide for the contingency of a refusal of the agency by the houses, it is equally clear that they did not believe that any such agreement would be required, otherwise they would have authorised General Lallemand or some other person to have made it, and would have directed the course to be pursued in the event of a disagreement. The understanding of the deputies, therefore, certainly was, that the houses should receive such commissions as are reasonable and usual; and such and such only were the houses, accepting the trust under these circumstances, entitled to charge.*

* That no agreement was in fact made with Gen. Lallemand, is satisfactorily shown by Mr. H. D. Sedgwick in his Refutation, to which we have referred.

We have not noticed in our text, as our argument did not require it, the misrepresentations of Judge Platt as to the powers of General Lallemand and the houses under the instructions of the deputies, but they are too singular and important to be passed without observation. Judge Platt says "General Lallemand had alone a negative on all the members of the "two houses;" and in a subsequent passage that "the houses were restricted from doing any act without his consent and approbation." Now, this is so far from being true, that the building of the vessels is *exclusively* committed to the houses, and General Lallemand, instead of having a ne-

The last ground on which the arbitrators defend the commissions is, that they were in fact fair and reasonable, a compensation happily proportioned to the services performed and the risk incurred. On this subject, it is not our intention to detain our readers with any remarks. It has been amply discussed, and is fully understood. We leave it to the public to determine how far it was honest and conscientious in the houses to exact those commissions, and discreet and just in the arbitrators to allow them. If the minds of any of our readers are yet in suspense, they may perhaps assist their reflections by consulting a statement they will find in the appendix. (Appendix No. 9.*)

gative on their proceedings, had no voice on the subject. The Fourth Article of the instructions declares, that orders should be given and contracts made for the building of two frigates, *by the American houses*, without any mention of the name of Gen. Lallemand; and the Fifth directs Gen. Lallemand *alone* to ascertain that the frigates should be of the first class, the materials of the best quality, and that in the building, &c. the rules of the U. States navy should be followed; and so far as was necessary to the execution of these powers General Lallemand had undoubtedly a negative, and more than a negative, on the proceedings of the houses, but no further. They might contract with whom they pleased, upon what terms, and at what price they pleased, and his consent and approbation were not necessary to the validity of a single act. It is true, there are other powers embraced in the instructions that were clearly meant to be joint, but in all that relates to the mere building of the ships, the powers of the houses and General Lallemand are not merely several and distinct, but the separation is carefully marked.

* “ We offered to show by the production of letters, and contracts, which
 “ were objected to by the counsel of Mr. Contostavlos, and rejected as inadmissible, that we were to be compensated at the rate of 10 per cent. for
 “ the purchase and construction of a ship of 74 guns, 2 frigates, and a sloop
 “ of war, for one of the Republics of Spanish America, and to be paid by bills
 “ on London, drawn against the loan effected in that country.” (Exp. p. 16.)
 So far Mr. Bayard. The facts are these. One of the counsel of Mr. Bayard (Mr. D. B. Ogden,) offered to read in evidence an extract from a letter for the purpose of proving the *facts* that Mr. B. has mentioned. In making the offer, Mr. O. remarked, that he knew that the evidence was not properly admissible, and he supposed would be objected to, but he wished the arbitrators to note the offer. We requested a perusal of the letter that we might determine whether we would consent to its production. It was handed to us and read. If the *whole* were read, we were satisfied it would not

We now come to the subject of *disbursements*. We had an unquestionable right to demand competent evidence of the actual payment of the money charged to us. We had a right to know what these moneys were paid for, and when they were paid. Without this knowledge we could not test the accuracy or fairness of the charges for disbursements in any particular whatever. For the purpose of making this examination, we were desirous of inspecting the original bills of parcels and the receipts furnished to the houses. We were the more so, because we recollected the repeated declarations made by the houses in their letters, that they paid for every thing in advance, and we knew that according to the course of trade, many of the articles in question were not considered cash articles, and were usually and indeed almost universally sold to persons of good standing on a long credit. Before we go into an examination of the secondary evidence, if evidence it can be called, which is now brought forward to show the cost of these frigates, it is proper that our readers should understand with what success we applied for the primary, and necessary evidence of the alleged disbursements, and in what manner its production was evaded.

Mr. Bayard's statement on this subject is as follows :

“ It is alleged throughout the Narrative, that accounts
 “ and vouchers were studiously withheld by the two houses. I
 “ shall content myself with saying, that the assertion is utterly
 “ false and unfounded in all its bearings. A statement of the
 “ expenditures, as far as one could be made, was handed to Mr.
 “ Contostavlos immediately after his arrival, and a regular ac-
 “ count as soon as it could be prepared. It will be seen by the
 “ Report, that the *original bills and vouchers*, supporting every
 “ item of the accounts, were laid before the arbitrators, and with

prejudice but benefit our clients. We therefore returned it to Mr. Ogden with our permission to read not an extract but the letter. Of this offer Mr. Ogden did not avail himself; the letter was instantly withdrawn, and according to our recollection, the request to the arbitrators “to note the offer,” was not repeated. This was the only letter offered to be read for the purpose mentioned by Mr. Bayard, and the only contract produced was admitted, and has been published in Mr. Sedgwick's Refutation.

“ all the other papers, were by them delivered to Mr. Sedgwick. (p. 42 of the Report.) Some time was, however, necessarily consumed in collecting the various bills of parcels and receipts; but as soon as it was possible, they were laid before the arbitrators—they were subsequently delivered to Captain Earle, to verify the inventories furnished to the arbitrators by Captain Chauncey.”

Mr. Bayard here speaks of a statement of expenditures and a regular account. The first was handed, he says, soon after Mr. Contostavlos' arrival, which it will be recollected was on the 12th of April, and the other *as soon as it could be prepared*. The regular account here referred to was delivered on the 15th of June as appears by the letter of *both houses* enclosing the same.

This regular account differs in many particulars, it is true; from the statement of expenditures, but not in any thing which could denominate it a regular account. *It contained no statement as to the quantity or price of the articles for which the payments had been made.* It was unaccompanied with any bills of parcels or other document, by which the quantities, prices, or any other particular of the articles purchased; or the charges therefor, could be ascertained. In short, will our readers believe it? It is the very account contained in the appendix of Mr. Contostavlos' Narrative, and on which he comments with so much force. If Mr. Bayard speaks of both houses; both accounts are there published.

The sum total of expenses incurred in building and equipping the Hope, according to the statement of expenditures aforesaid, including “estimated balances due,” was \$404,845 40, exclusive of commissions. The sum total of the same expenses, according to the “regular account” furnished “as soon as it could be prepared,” was \$396,851 66. Mr. Bayard proceeds to say, “that it will be seen by the report (of the arbitrators) that the original bills and vouchers supporting every item of the account were laid before the arbitrators, and with all the other

papers were by them delivered to Mr. Sedgwick ;” and in proof of this he refers to page 42 of the Report.

Did Mr. Bayard mean by original bills, the bills of parcels, or any thing else ever called by that name? He knew that no such bills were ever delivered to Mr. Sedgwick. But let us before we proceed further, turn to the Report of the arbitrators. They say, speaking of what took place after the award, “Messrs. Sedgwick then applied to the arbitrators for a re-delivery of the papers, accounts, and correspondence, which had been submitted by them on the hearing, and presuming that all parties assented to the award, the arbitrators without reserve, and without note or memorandum, distributed the large mass of *books and papers relating to the controversy* to the respective parties as claimed by them, without nice discrimination or inquiry who had furnished them.”*

It will be seen by the above, that the arbitrators say nothing of bills of parcels, or any bills whatever. It will also be recollected, that one of the most serious charges of Mr. Contostavlos’ pamphlet against the houses, and against the arbitrators also, was that he had never been able to obtain bills of parcels, either before or after the arbitration, and that consequently he had no means of detecting errors of any kind ; or of ascertaining whether the expenditures had been made with economy or otherwise.

The arbitrators do not attempt to deny this charge, or to justify themselves against it. Mr. Bayard, after referring to their reports in proof of his assertion that the original bills of parcels were delivered to Mr. Sedgwick, proceeds to assert that they were in fact as soon as it was possible, laid before

* The arbitrators add, “several of those papers and documents have since been sought for in vain.” The papers which Judge Platt speaks of were delivered to me ; not one of them was sought for in vain, or sought for at all from me, unless the letter of Mr. Eckford to Gen. Lallemand, offering to build the frigates, was among those papers. That letter has been applied for in behalf of Gen. Lallemand, and if it was among those papers, (I think it was not) it is lost. We deem that letter an important document, and should be happy to be able to produce it.

R. SEDGWICK.

the arbitrators, and subsequently delivered to Capt. Earl, to verify the inventories furnished by Capt. Chauncey.

A simple statement of the truth of the case will flash conviction at once into the minds of our readers, not only as to this topic, but every other which could be affected by the representations of Mr. Bayard. As Mr. Contostavlos has stated, he did repeatedly express to his counsel, both verbally and by letter, the strongest desire that, as far as practicable, bills of parcels, vouchers, receipts, &c. should be produced, showing the periods when the payments were made, and what they were for. We did repeatedly call for these documents, and were told, from day to day, that they should all be produced. Still the promise was not complied with. We were then told that the production of strict evidence as to the disbursements of the houses, and, in particular, of the bills of parcels and original receipts, would require a longer time than was allowed for the arbitration. We did—or rather, one of the counsel did—then acquiesce in the proposal of the houses to furnish, not the original receipts, but general and duplicate receipts; each of which should express all the payments made to the party giving it.

After Mr. Contostavlos' return from Washington, he instructed us positively not to proceed until the bills of parcels were furnished. Mr. Duer then informed the arbitrators, that we were bound by positive instructions to withdraw the consent which we had given, and require these bills.

A new assurance was then given by Mr. G. G. Howland, on the part of the houses, that all these bills should be produced. It was suggested at the same time, that the hearing need not be delayed on that account; and accordingly it went on. We owe an apology to Mr. Contostavlos, to our clients, and to every friend of the cause which was placed in our hands and those of our associate counsel, for having consented to sum it up, before the production and full examination of these bills. We did it from a strong sense that it was absolutely necessary to give effect to the arbitration, which was restricted to a very limited period, and for the despatch of one of the frigates.

In point of fact, these bills of parcels never were produced before the arbitrators. Not one of them ever came to our knowledge. Mr. Contostavlos actually left this country without any knowledge, that he had been furnished with the articles for which he had paid, or as to the prices charged therefor. These bills of parcels were absolutely necessary not only for the purposes above mentioned, but to verify the inventories of Capt Chauncey, that is, to show that all the articles charged for by the houses, were actually contained in those inventories. After thus verifying the inventories, nothing would have remained to be done, except to compare them with the ships, and the articles themselves.

This latter comparison, although extremely unsatisfactory in its nature, was all that remained in our power ; and Capt. Earl was, at our request, appointed by the arbitrators to the office of making it. After seeing the statement published by Mr. Bayard on this subject, and feeling the astonishment which our readers must now understand and participate, we called on Capt. Earl to learn whether the bills of parcels had ever been placed in his hands, having no suspicion that such was the fact. The substance of his information respecting them will be found in the correspondence which afterwards took place between us, and which we present entire to our readers.

New-York, Nov. 19 1826.

Capt. John Earl,

Having been informed in conversation by you this morning, and for the first time, that bills of parcels of articles for the *Liberator* and *Hope* had been put into your possession, we ask of you the favour to give us an explicit answer to the following questions

1st. By whom were you appointed to perform the service which you undertook in the presence of the arbitrators, Messrs. Platt, De Rham, and Ogden?

2d. What was the precise service which you were requested to perform?

3d. Did you receive any, and what bills of parcels, and when, and from whom, and at what place?

4th. Did you receive any injunction, and from whom, not to let the said bills of parcels go out of your hands, and to return them to the parties from whom they were received, and did you engage to comply with such injunction?

5th. Do you know that it was known to either of the counsel for the deputies, that said bills of parcels were delivered to you?

6th. Did you ever compare said bills of parcels with the materials and supplies shown to you, or with the inventories delivered to you, and were you ever required to make such a comparison?

7th. Do you know whether the bills of parcels corresponded in amount with the items contained in the general accounts of the houses and included all those items? or whether the articles specified in the bills were delivered with or contained in the frigates?

8th. To whom did you deliver said bills of parcels?

We feel persuaded that you will not hesitate to answer the above inquiries, however painful it may be to you to have your name introduced into this unhappy controversy.

Yours, &c.

JOHN DUER.

R. SEDGWICK.

New-York, Nov. 20 1826.

Gentlemen,

Your note of yesterday was handed me this moment, putting to me certain interrogatories touching the affairs of the Greek ships.—Till now I had hoped the part assigned me and the manner it was performed, would have excused me from any part in this truly unhappy controversy; nor do I conceive the parties or the public will be enlightened by the answers required.

In reply, however, to your 1st, 2d, 3d, 4th, and 5th interrogatories, I answer, I was requested by the Greek agent and his counsel, to call at the Exchange Coffee House at 4 P. M. of that day, when the object of such call would be explained. I called at the appointed hour, and was informed by the arbi-

trators (which appeared to be fully assented to by all present,) they wished me to compare the ships *Liberator* and *Hope*, together with all their appurtenances on board and in stores, with their inventories, and to verify the same. The day following, I received at the hands of Judge Platt, an inventory for each ship, endorsed on the back, "*Copies of inventories sent to Washington*," and also an introductory letter to Capt. W. Chauncey, requesting him to facilitate my operations, signed "J. Platt and A. Ogden." At the same time I did receive from William Bayard, jun. a bundle of papers said to be vouchers, and a promise from G. G. & S. Howland to furnish theirs also, which was afterwards handed me (at their counting-room,) with an injunction not to suffer these papers to go out of my hands on any pretence whatever, stating that in many instances they were the only vouchers they had for moneys paid; the time and manner in which I received these papers, and from the very nature of the subject, the conclusion was irresistible (but without a knowledge of the fact) that those vouchers had been before the arbitrators and counsel for the parties.

6th and 7th. I did attempt a comparison of those vouchers with the articles specified in the inventory, but for want of a general account of disbursements, found them in a manner useless, and in fact, I might consider such comparison incompatible with the duty assigned me, and interfering with the exclusive prerogative of the arbitrators.

I returned the vouchers as received to the respective parties. With a sincere wish that this unhappy affair was amicably adjusted,

I am very respectfully yours,

JOHN EARL.

R. Sedgwick and John Duer, Esqs.

Nov. 21.

Capt. John Earl,

Sir, it does not certainly appear from your favour of yesterday, whether you received an injunction from Mr. Bayard, in regard to the papers which you speak of as having been hand-

ed to you by him, as well as from Mr. Howland, not to suffer them to go out of your hands. Will you have the goodness to inform us what was the fact?

You will also much oblige us by informing us, as nearly as you can from memory or otherwise, on what day of July you received the inventories from Judge Platt; on what day you received Mr. Howland's papers, and on what day or days you returned the papers to those gentlemen; and also on what day you delivered the inventories made out by yourself to the arbitrators?

Mr. Duer unites with me in this request, although he is not present at this moment to subscribe this letter.

R. SEDGWICK.

New-York, Nov. 25 1826.

Gentlemen,

In reply to your note of 21st inst. I cannot state positively, but my impressions are, when I received the papers from William Bayard, jun. he did enjoin it on me "*not to let them go out of my possession.*" Nor am I positive, as to the day I received the inventories from Judge Platt, and the papers alluded to.

It must have been one or two days prior to the 20th July, as I find my *report* was dated on the 29th. It was, however, some days after the last mentioned period, I returned the papers to the respective parties of whom they were received.

Respectfully yours,

JOHN EARL.

R. Sedgwick and John Duer, Esqrs.

From the foregoing correspondence it appears "quite doubtful what the papers were which Capt. Earl calls vouchers. It further appears that Capt. Earl considered, and justly, that his duty went no farther than to compare the inventories of Capt. Chauncey as far as he could, with the articles therein mentioned, and that it did not comprise an examination of the original bills of parcels. It further appears that if he had endeavoured to compare the bills of parcels, supposing he had

them, with the articles, that it would have been impossible to do so from want of a general account, and from want of time. It also appears that the papers which Capt. Earl had, were not to be delivered to us "on any pretence whatever," and that he never informed us that they had been placed in his possession.

Our readers will now judge with what propriety the arbitrators say, that the ships "have, we doubt not, cost much more than Gen. Lallemand or the houses anticipated. But there was no evidence nor any attempt to prove that there had been any waste of labour or materials, or that more had been paid in any instance for labour or materials than was necessary; and it is known that the arbitration was held in this city which was the theatre of operations, and thereby every facility was afforded to detect false charges, frauds, or misconduct."

Thus it is taken for granted by men acting as judges in the case, that the cost of these vessels exceeded the anticipations of the houses, without any evidence as to what those anticipations were, and without any evidence whatever as to the cost, except the allegations of witnesses as to the great rise of materials and labour. But we are told that every facility was afforded to detect false charges, frauds, or misconduct. How could we detect false charges without knowing what the charges made were for? How could we detect frauds without the least clue to the quality, quantity, or price of the articles? If we had been possessed of every facility to which we were entitled, the want of time would have rendered a full and satisfactory examination impossible. It must be recollected that the arbitration was originally assented to by the houses, upon condition of limiting the period of the award, and that the two enlargements of time afterwards granted, were consented to by them for the purpose of completing the investigation, such as it was, and not to afford the means of making one which would be satisfactory. Add to this, that there was no process to compel the attendance of witnesses, except under an obsolete statute, which was resorted to with regard to several witnesses without effect; and the

facilities to detect false charges and frauds, will be fully understood.

We are now prepared to go into an examination of the evidence which Mr. Bayard has brought forward in regard to the cost of the frigates, and which we have before called secondary, but which in strictness, considering that better was in his power and has been withheld, is no evidence at all. The only proper use of the estimates which have been produced, and which we are now to examine, would have been to test the skill and discretion, or the wastefulness and extravagance with which the disbursements had been made. We are now compelled to examine them chiefly for the purpose of ascertaining what the disbursements were, or in other words, what the cost of the frigates actually was.

Mr. Bayard attempts to show that the cost of one of these frigates, calculated upon the basis of the estimate furnished to the Greek Deputies by his house in December, 1824, and making the proper allowance for the rise of materials and labour, would amount to \$503,125.*

If we are right in our supposition that the estimate sent by Le Roy, Bayard & Co. to the Greek Deputies in December, 1824, was intended to be, and actually was, an estimate of the expense of building a frigate of the largest size in our navy, and equal to the Brandywine or the Greek frigates, then we shall have nothing to add to that, except such sums as should be added on account of the rise of materials and labour, and on account of the extra equipment of the Greek frigates.

We shall add for the rise of materials and labour, what we deem rather a large allowance, viz. 20 instead of 25 per cent. this latter amount being claimed by Mr. Bayard upon the authority of the testimony of Commodore Chauncey. Commodore Chauncey did not pretend to speak* from any calculation that he had made. He spoke merely of his "impressions." In the next place it appears, that Commodore Chauncey's impressions were founded in a good measure

* Exp. p. 4.

upon the rise of prices during the summer of 1825. It appears from Mr. Demon's testimony,* that this firm had on hand when they made the contract, a considerable quantity of materials which were "furnished for the ship by fair appraisement," and that the price of materials "rose very much during the work." Many of the contracts for materials were made in October and November, a period beyond that to which the testimony of Capt. Chauncey seemed to refer. Besides all this, it appears by a comparison of the estimate forwarded by Le Roy, Bayard & Co. with that of the Liberator made by the navy commissioners, that the same items, as far as a comparison can be made, are charged rather higher in the former than in the latter. To this it may be added, that the deduction which we claim in our favour, is not greater in proportion than that which we allow to the opposite party, on account of an over estimate by Commodore Chauncey of the difference between live oak and white oak.

As to the allowance to be made for the extra armament and equipments, for the sake of avoiding all dispute we take the statement of the arbitrators.† This statement they make from an inventory delivered to them by Capt. Chauncey, we know not when, but presume for the purpose of making up their Report.

According to these principles, the following statement is made :

Amount of the estimate sent by Le Roy, Bayard & Co.‡	-	-	-	-	-	-	247,500 00
20 per cent. on this amount on account of the increased price of wages and materials, when the Liberator and Hope were built	-	-	-	-	-	-	49,500 00
Extra armament and equipment of both frigates, according to the Report of the arbitrators,							
\$34,256 44, half is	-	-	-	-	-	-	17,128 22
							\$304,128 22

From this we deduct the difference
between live oak and white oak,

* Rep. p. 25.

† Rep. 65.

‡ App. No. 4.

(which Commodore Chauncey put at \$25 or 30,000,) according to the estimate of the commissioners. 19,800 00

We must also deduct (the estimate being of a ship completely equipped,) the amount which remained to be added to the ship Hope and her equipments, the ship being in an unfinished state, of which \$17,188 63 is for articles taken from the Liberator.	-	-	-	-	*29,416 63	
						48,416 63
					Total cost,	\$265,711 59

Let us now examine the calculation of Mr. Bayard:

Amount of the estimate of December 1824,	-	\$247,500
To which add,		
1st. For the difference of tonnage, the 1,500 tons in said estimate being supposed to be carpenters' measurement. and the Hope being alleged to be 2,100 tons by that measurement.	-	99,000
2d. Additional expense per ton incident to a heavier ship.	-	22,000
3d. Cost of extra shot, sails, spars, kentledge, casks, &c.	-	30,000
4th. 25 per cent, increased prices of materials and labour.	-	99,625
5th. Pay of Capt. Chauncey, (why not \$5,750?)		5,000
		\$503,128

"All fully explained and proved before the arbitrators."

* The above sum of \$29,416 63 is taken from a statement handed to us by Capt. Earl, according to the best calculation he could make from his own purchases, and his recollection of those made by others. It is of course exclusive of the provisions, powder, pay of the men and officers, and of all charges except such as properly belong to the ships. It will be seen by the estimate of Capt. Chauncey (viz. App. No. 3.) made on the 20th of April, after which nothing of any importance was furnished to the ship, that the sum which we have deducted is not too large. If there be any error in this statement, it can be only in the sum of \$17,188 63, deducted as above.

We shall examine this presumptuous statement with a single reference to its accuracy, and leave the public to make such moral inferences in regard to it as they may think necessary.

We must examine each of these items separately. First, as to the tonnage. Mr. Bayard says that the tonnage intended in the estimate, was according to carpenters' measurement. The comparison which we have partially made, and which our readers can pursue still farther between this estimate and that of the *Liberator*, shows that this idea of carpenters' measurement was fabricated for the occasion. But we must detain our readers for a moment longer on this subject.

Mr. Bayard says that the estimate furnished to the Deputies was "taken from a printed document of the Navy Department." We challenge Mr. Bayard to produce it. We have every reason to believe that there never was such a document. No frigate of 1,500 tons carpenters' measurement was ever built in this country.*

The law of the United States regulates the mode of ascertaining the tonnage—according to this regulation every vessel is measured by the surveyor of the port before her register is obtained. The register of the *Hope* was thus obtained, and Mr. Robert Bayard took the usual oath for that purpose, and stated therein that the *Hope* was a vessel of 1778 tons. There is no tonnage known to the Government except that fixed by law. What possible reason then is there for supposing that this estimate was taken from the Navy Department?

The second item is for the additional expense per ton incident to heavier ships.

This is given without explanation, and is disproved by the estimate under consideration; by which it appears,† that no

* The only important difference between carpenters' measurement and Government or Custom House tonnage, is, that by the latter three fifths of the breadth of the vessel is deducted from the length and the residue only, instead of the whole length according to carpenters' measurement, is multiplied into the breadth and depth. Vid. Ingersoll's Dig. Blunt's Commercial Dig. 14.

† Appendix, No. 7.

such increase was supposed in any of the grades from a 36 to a 50 gun ship inclusive.

The third item is \$30,000 for extra shot, &c. We prefer the authority of the arbitrators, and have adopted it.

We have already discussed the fourth item, as to the 25 per cent. ;* and we leave the last without comment, being willing that our readers should put it at what they please.

But we are willing to make any possible allowance in favour of the houses which can be claimed upon any supposition within the compass of reason. Our largest frigates rate as forty-fours, and are built under a law authorizing the building of 44 gun ships. The old ships of this class measure about 1560 tons (government tonnage). The new ships of this class measure about 1700 tons. This we state upon the most satisfactory authority. We believe the *Brandywine* is the first ship built of this latter class, or rather, size. Suppose, then, that the estimate sent to the deputies referred to the size of the old frigates; then we have to allow for the difference between 1560 and 1778 tons, the tonnage of the *Hope*. The cost would then be as follows :

Amount before stated,	\$265,711 59
Add for difference of tonnage, as above, at	
\$165 per ton,	35,970 00
	\$301 680 59

It must be added, however, that, as we are informed by a ship-builder as respectable as any in the United States, this calculation on account of the increased tonnage is entirely delusive, the difference of expense, in such a case, not being at all proportioned to the difference of tonnage.

The next evidence on this point, produced by Mr. Bayard, is taken from the case of the *Brandywine*.

According to the Report of the Arbitrators Commodore Chauncey is made to say, that "the public statement of the cost of the *Brandywine* (\$273,000) does not include her masts,

* Mr. Bayard charges the 25 per cent. upon the *extra shot, sails, spars, &c.*

spars, sails, and rigging." Mr. Bayard says,* "he" (Commodore Chauncey) "*frankly* admitted that the masts, spars, rigging, and sails, were not included in the estimate," &c.—The document, to which Commodore Chauncey referred, was an estimate of the cost of the Brandywine, produced by Mr. Contostavlos, and admitted in evidence. Unfortunately that document is lost, and we much regret it. It must have contained masts, spars, and rigging, by name, (though, perhaps, not all;) for Commodore Chauncey said, that the masts, spars, and rigging, (those in the estimate) appeared to be estimated low. He further stated, that masts, spars, rigging, &c. were taken from other vessels; and that the practice in the navy, in such cases, was not to charge such articles to the new ship until they were supplied to the ships from whence they were taken; but he did not know, that the supplies to the vessels, thus partially dismantled, had not been made, and, consequently, charged to the Brandywine and included in the estimate.

Such was Commodore Chauncey's testimony as taken from the notes of Mr. R. Sedgwick—Mr. Duer was not present; and such, we think, it would appear to have been substantially by the letter which he had the goodness to address to us on the subject, in reply to one in which we requested him to correct any mistakes which might be found in our statement of his evidence.†

Mr. Bayard asks, why Commodore Chauncey's testimony, as he has represented it, was suppressed by Mr. H. D. Sedgwick? This we have answered. But it is proper to add, that Mr. H. D. Sedgwick stated the cost of the Brandywine at \$273,000 "as completely equipped," because the estimate produced by Mr. Contostavlos, and admitted in evidence as before mentioned, purported upon its face to be a complete estimate, that is, contained nothing from which it could be inferred that it was not so; and Mr. H. D. Sedgwick did not

* Exposition p. 12. We beg our readers to turn to Mr. Bayard's statement.

† Vide Appendix, No. 7.

deem it material to insert what he regarded as a mere conjecture of Commodore Chauncey.

The practice in the navy is, doubtless, as Com. Chauncey has stated ; and we have endeavoured to ascertain whether any thing and what is to be added to the estimate of 273,000 dollars. All we can learn is, that the accounts of the *Brandywine* are not yet completed ; and we have not, therefore, been able to learn what her entire cost was. This ship was fitted out with more than ordinary expense, on account of the special service which she was about to perform.†

The safest calculation which can be made of the actual cost of the *Hope* is to be derived from the estimate of the *Liberator*, by the Commissioners of the Navy. It is matter of surprise, that Mr. Bayard, who had been treated with so much courtesy by the government in his diplomatic negotiations, should have made the ungracious suggestion, "that the government of the United States in the plenitude of its generosity has thought fit to receive one of the Greek frigates at about half its cost." No man can read this without disgust. If the government were capable of driving a bargain in such a case, they would, at least, desire to know the profits of the speculation. It is absurd to suppose, therefore, that those gentlemen who were appointed, not to purchase, but to appraise the ship, would put any other than a fair value upon her. They did undoubtedly appraise her at what they supposed she would have cost the United States if they had built her. It is not to be supposed that they allowed any thing for the expense arising from extraordinary despatch, or the extraordinary price of materials and labour. We must, therefore, make an allowance for these circumstances. The result is as follows :

† The only estimate of her cost, which we can now procure, confirms our calculations. In that estimate it will be perceived are included all the ordnance and stores, and all the expenditures for *equipment and outfits* then ascertained. Vide Appendix, No. 6.

The amount of the estimate of the Liberator,*	\$230,570 97
Add for articles discovered not to be in the inventory	
and afterwards allowed for, supposed†	3,000 00
Extra price of materials and labour, 20 pr. ct. as above,	46,714 19
Amount of kentledge afterwards sold to government,‡	5,600 00
Probable cost of the Liberator, as delivered by the houses,	285,885 16
From the above we must deduct the difference between the expenses of the Liberator and the Hope,	8,417 78
	\$277,467 38

For the ship Hope we have paid, exclusive of commissions,	\$399,321 28
Deduct, as above,	277,467 38
	\$121,853 90

Making ONE HUNDRED AND TWENTY-ONE THOUSAND EIGHT HUNDRED AND FIFTY-THREE DOLLARS AND NINETY CENTS, exclusive of commissions, more than this vessel ought to have cost !§

Enough has been said as to the moneys paid to Captain Chauncey.

A word remains as to the ship-builders. We shall not treat the public with so little respect as to argue this matter at any length.

* Appendix, No. 5.

† This is as near as we can ascertain it, but may not be precisely accurate.

‡ This is according to statement handed by Capt. Earl.

§ The statement which Mr. Bayard has made, respecting the vouchers, bills of parcels, &c. together with his parade of calculations as to the actual expenditure for these ships, render it absolutely necessary for us to give the public some information in our possession, which has a material bearing upon these points. It will not be expected, that we should apply, or if we did, that we should be successful, to the persons with whom contracts were made, for the particulars of discount or credit allowed to the houses; still less that any information could be gained as to good bargains, profitable jobs, &c. If we had made such applications, we should not have blamed

The arbitrators say, that "no attempt was made to prove that any other ship-builders could have been procured to do the same for a less price." We reply, that no attempt was

those gentlemen, who from motives of delicacy, chose to withhold information.

Notwithstanding all this, we have heard enough to compel us to believe, that credits were given in many cases and upon heavy contracts, although the houses constantly declared to the deputies that they paid cash for every thing, and although this general declaration was confirmed by Mr. G. G. Howland and Mr. Wm. Bayard under the strongest assurances to the counsel of the deputies, during the arbitration, that every thing had been paid for at the periods of the charges in their accounts.

We know that credit was given by Messrs. Goodhue & Co. on their contract, (although we do not derive this information from those gentlemen themselves,) and that they have been but recently paid in full.

The following statement, which can be verified by the oaths of several respectable gentlemen, may enable our readers to form some conception of the scenes which would be brought to light if this whole transaction were uncovered.

The houses have charged the deputies \$29,259 25 cents, for money paid Messrs. Nixon & Woodhull for shot.

In the "statement of actual payments," up to 15th April, made by G. G. & S. Howland, shortly after Mr. Contostavlos' arrival, and which Mr. Bayard calls a "statement of expenditures," there is the following charge :

"Nixon & Woodhull shot"	13,500 00
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The correspondent charge in the "statement of expenditures," without any heading, dated April 18th, furnished by Le Roy, Bayard & Co., stands thus :

"Nixon & Woodhull shot"	13,500 00
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And in the annexed list of "estimated balances" is the following charge :

"Nixon & Woodhull shot"	1,200 00
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In the account of Messrs. Howlands, rendered in June, and headed "statement of actual payments," &c. the charge stands thus :

"Paid Nixon & Woodhull for shot and carting, \$7,500,	
6,000. Balance 1,191 75"	14,691 75

In that of Le Roy, Bayard & Co. rendered in June, it stands thus :

"Nixon & Woodhull shot"	14,567 50
"Nixon & Woodhull shot"	124 25

made on the other side to support these charges, *except by the ship-builders themselves*. They were the persons who judged their compensation to be reasonable.

Some time in November, 1825, Messrs. Nixon & Woodhull stopped payment. A meeting of their creditors was called about the 1st of December. Mr. G. G. Howland was present, and represented to the creditors that Nixon & Woodhull had made an assignment to him, to pay first 3000 dollars which was due on a shot contract, then, after paying borrowed money, to pay confidential-creditors, including 5000 dollars which Mr. Howland said he had advanced to Nixon & Woodhull, or one of them, to go into business, and did not expect to receive again, and which he would give up if the creditors would assent to his proposal, and which was as follows, viz.—Mr. Howland said, that N. & W. had a contract to furnish shot for certain ships which were to leave New-York in the spring; that he, Mr. Howland, would furnish them with the means to complete the contract, and after paying himself the moneys advanced, would pay the profits to the creditors, if they would suffer Nixon & Woodhull to go on and finish the contract; that the profits would be as much as 6000 dollars, or thereabouts, which would be cash on the delivery of the shot, which was to be completed in February or March; and that, if the creditors did not assent to this, he, Mr. Howland could sell the contract and put the profits in his own pocket. Mr. Nixon or Mr. Woodhull, who was present at the same time, represented that these profits would probably be 10,000 dollars.

The creditors assented to this proposal, and allowed N. & W. to complete the contract. Some time in March Mr. Howland being called on for the money to go to the creditors, said he could not pay them then, as Le Roy, Bayard & Co. had given notes for the money due to N. & W. at 60 or 90 days, or some other period, and that he, Mr. Howland, could not pay until their notes were paid. At the end of this period, Mr. Howland being called on again, said he was engaged in an arbitration (supposed to be that respecting the Greek frigates) and would do nothing about the business until that should be finished. After the arbitration payment was still delayed; and at a meeting of the creditors in *September last*, Mr. Howland proposed to pay the confidential creditors 62½ cents on the dollar, they giving N. & W. a full discharge, and to pay himself 62½ cents on the 5,000 dollars; and if they did not do this, Mr. Howland said he would take the profits of the shot contract and pay his own debt of 5000 dollars, he Mr. H. declaring, that the shot contract was not included in the assignment by N. & W., and that he could do as he pleased with that. He afterwards told Mr. Russel, of the house of Russel & Jacobus, as that gentleman has informed us he is willing to testify, that if the creditors did not assent to his proposal, he would take the profits of the shot contract to himself.

Mr. Howland also stated at the meeting in September, that the profits on

The arbitrators were bound to reject the evidence offered as the rule of compensation, it being monstrous. The counsel of the deputies believed the arbitrators competent judges on this point (two of them being merchants) and reposed themselves on their understandings, and consciences. It appeared to us, that it would be treating this evidence with too much respect to bring witnesses against it.

Mr. Bayard says that these ships—both of them!—(had he forgotten the letters of the houses on this subject?)—were launched in five months and *three days* after their commencement. So much the better for the builders. Fifty thousand dollars for their labour, and the exclusive use of their yards, &c. &c. for five months and three days—or, if we go back to the beginning of the contract, for six months! Our readers may perhaps form some judgment on this subject, from the following facts, which we have upon such authority as precludes all doubt of there being any substantial mistake.

The ship *Henri IVth* was put on the same slip from which the *Hope* was previously launched. The same yard, blacksmith's shop, and mould lofts, were used as for the *Hope*. The *Henri IVth* was on the stocks about six months. She was

said contract would exceed 9,000 dollars, and Mr. Nixon has represented the same to be not less than 10,000 dollars.

A part of the amount due these creditors from this shot contract has since been paid, and a part remains due, unless paid very recently. Mr. Woodbull is Mr. Howland's brother-in-law.

Interest was allowed by the arbitrators on all disbursements, and consequently on the profits of this contract, from *November 1825*. *Ten thousand dollars profits* on a contract but little exceeding 29,000 dollars!!!—Profits, too, which Mr. Howland could put in his own pocket by a *sale of the contract*!

Such is the fidelity with which these houses have watched the interest of their employers, “augmented, if possible, by their zeal for Greece.”

If these gentlemen can acquit themselves from the thousand dark suspicions which rush into the mind of every reader upon this statement, we will most cheerfully join in the verdict of their acquittal. But this can only be done by the production of the bills of parcels and the original (not the “duplicate”) receipts, with competent evidence that they are genuine documents. We solemnly call upon these gentlemen for this evidence. If it be withheld, their plea of not guilty must be considered as withdrawn.

a vessel of 500 tons, carpenters' measurement. Messrs. Bergh & Co. were at the trouble of procuring all the timber, plank, copper bolts to fasten the ship, all the iron bolts, all the masts and yards, and they paid for all the labour. Their compensation was \$16,800. It will be said that there was a great difference in the tonnage of the two ships: but their services were exclusively devoted to the Henri IVth as well as to the Hope. There was in truth, no very material difference between the two cases, except in one circumstance, which we have omitted. The materials and labour above mentioned, were paid for by Messrs. Bergh & Co. out of their own pockets, and included in the \$16,800.

To this we will only add, that Mr. Eckford, whose professional reputation is certainly not surpassed in this country, was employed by the government to superintend the building of the Ohio, and was thus employed two years. He performed all the services for that ship, which were performed for the Greek ships by the ship-builders and Capt. Chauncey, (with the single exception of furnishing the yard,) and his compensation was \$2000 per annum. His services for two years, may perhaps be thought equal to those of Smith & Demon, or Christian Bergh & Co. for six months, although these gentlemen were exclusively devoted to one object.

With regard to the policies of insurance, which Mr. Constavlos so often called for, and which were not produced, and on which the premiums were allowed, nothing is said by the arbitrators, except that without the slightest explanation, after a computation of the extra expenses of the frigates, they say, "to which extra charges may be added \$4741 13, paid for insurance;"* and except also, that in that part of their Report† in which they are speaking more particularly of their services, they say that ten or twelve different policies, in various offices, covering the ships, &c., were transferred to them. On this subject, even Mr. Bayard is silent.

We have not time to examine at large the subject of the shot lost on board the schooner Exchange. It will be seen,

* Report, p. 66.

† Ibid. p. 7.

by an examination of Mr. Contostavlos' Narrative,* that the charge made by him is not answered by Mr. Bayard.

These shot were included in the accounts of the houses, and *they never gave any information of their loss*. This fact was discovered by Mr. Contostavlos during the arbitration. This is not denied by Mr. Bayard. General Mason had delivered the shot to Mr. Wallace, (who was to superintend their shipment as the agent of the houses,) and had drawn on the houses for the amount thereof, some time previous to the shipment. This is not denied by Mr. Bayard. Where was the difficulty of insuring "by a vessel or vessels?"

The only material remaining allegations of Mr. Contostavlos are, that Mr. Wallace's letter advising of the shipment, was alleged to be lost;—that Gen. Mason's correspondence with the houses was called for, and after much delay, some letters from him were produced, which did not relate to the shot, but *referred to other letters*, which were declared to be lost or mislaid;—and that, under these striking circumstances, a proposal by Mr. Contostavlos, that a statement to be made by General Mason on the subject, should be received in evidence, (it being impossible to procure his attendance,) was rejected. Mr. Bayard's only answer to all this is—"It is said "that General Mason's letters *on the subject of this shipment*, "were called for, and not produced. *The allegation is false:* "every letter of that gentleman, *which could be found*, was "produced; and *it is evident* that none of them could speak "of any particular shipment made by Mr. Wallace, so as to "have furnished us with the means of making insurance." Mr. Bayard's apparent contradiction of Mr. Contostavlos appears, on a second view, not to be such.

The allegation made by Mr. Contostavlos was, that the correspondence of General Mason was called for, and not produced. This is not denied. The copies of Gen. Mason's letters, which we might have procured from him, and produced in evidence, with the consent of the opposite party, would have furnished the desired information. The houses

* Report, p. 43, 4

chose then, as Mr. Bayard does now, that we should rest satisfied with their declarations as to what these letters did not contain.

What the arbitrators ought to have decided on this point, considering the defectiveness of the evidence before them, is a point which we do not mean to discuss; but this part of the transaction, in so far as it implicates the houses, is of the most serious import.

The regular order of discussion would perhaps require us to introduce here the questions respecting the alleged loss of the Messrs. Howland of £7,500 in the hands of Mr. Samuel Williams, and respecting the damages on the protested bills; but we shall reserve these topics for future consideration.

There is no single document relating to this controversy, more important than the letter of the houses of the 15th of April.* We do not intend to enter into an argument as to the right to rescind the contract, and do not introduce this letter with that view; but solely on account of its important bearing in respect to the Report of the arbitrators, and the integrity and fidelity of the houses. But we cannot entirely pass over the very extraordinary statement of the arbitrators on this question of rescinding the contract. They state,† that “the counsel for the Deputies expressly admitted, at this point of the evidence,” (long before the counsel of the Deputies opened,) “to the arbitrators and the opposing counsel, that the Deputies were chargeable for the actual fair and reasonable cost of the frigates.” And the counsel of the houses express their clear recollection of this admission. Our recollection is equally clear, and precisely the reverse of this. The admission which was made, was solely in reference to the question of building vessels of a larger size than the Deputies had intended and ordered: and even that admission, having been made in mistake, was afterwards rejected.

The arbitrators and the counsel, or we, are under a mistake; and this must be decided according to the probabilities

* Appendix, No. 3.

† Report, p. 22.

arising out of the case. When the arbitrators come to assign the reasons of their Report on this question of rescinding the contract,* (which they do at great length,) they repeat this alleged positive admission, which, if it had existed, would have saved the necessity of all argument on the point. And what is not a little strange, they lay great stress upon the *implied* election of the Deputies to affirm the contract arising out of their non-election, within a reasonable time to rescind it. Nay, more;—so urgent are the arbitrators to press this point, and to strengthen the presumption arising from lapse of time, that, after admitting the right of the Deputies to a reasonable time to ascertain the truth of the information respecting the legality of the enterprise, they straightway take for granted and assert, what is not true, that Mr. Contostavlos consulted counsel immediately after his arrival in April. They add, that “no intimation to rescind the contract was ever given by him, although he knew that the houses *were then at work in finishing the ships*, and doing other acts in reference to that contract.” How does the character of advocate constantly peer through the gown of the arbitrator? The truth is, that Mr. Contostavlos did not consult counsel until the period when a negotiation was opened for an arbitration; and that the very moment he was made acquainted with his right to rescind the contract, he made use of it to compel the parties to an arbitration.

The accounts of the houses show that nothing, or next to nothing, was done “towards finishing the ships,” after Mr. Contostavlos’ arrival. Small sums are added to their accounts between April and June, but we believe exclusively on account of previous contracts. We do not believe that a day’s labour was done upon the ships after Mr. Contostavlos’ arrival.

If the admission imputed to the counsel of the Deputies by the arbitrators, and specially to Mr. Duer, by the counsel of the houses, had been made, why did not the arbitrators stop Mr. R. Sedgwick in his opening of the cause, when he stated the right of the Deputies to rescind the contract?

* Report, p. 51, 2, 3.

That this "singular claim" was brought forward by that gentleman, is admitted by the counsel of the houses; and though this circumstance "struck" them "with surprise," it is omitted by the arbitrators in their statement of his opening. We ask still more emphatically, if this alleged admission was made, why, after the evidence was closed, the arbitrators "were unwilling to express any opinion preliminarily" upon this point of rescinding the contract, and therefore decided that the privilege of the closing argument should be determined "by lot?" We ask still further, why the arbitrators permitted an argument on this point when the cause was finally summed up? and why it did not occur to them, or the counsel of the houses, who elaborately argued this point, to avail themselves of an admission which necessarily precluded all argument?

We now come to the letter of the 15th of April. This letter is filled with matter which an apologist of the houses would wish to have suppressed. The statement as to the building of ships for Colombia, Peru, Mexico, and Brazil,* and fifteen frigates for the United States, which will be hereafter examined, if not intimately connected with the merits of the disputed questions, had an obvious tendency to awaken suspicion as to the houses, and to confirm the general allegations made by Mr. Contostavlos of their unfairness and untruth. The declaration that the ships could not be got ready for sea in less than six months, was of still greater importance. But that part of the letter which relates to the illegality of the enterprise, of itself gave a character to the whole controversy. It was this which gave us the right to rescind the contract with the houses, and which consequently gave us the power of dictating equitable terms of compromise. The false representation upon this point, was also considered by us as decisive upon the question of commissions, and as repelling any pretence of right to any commissions whatever.

That our readers may perfectly understand this passage of the letter, it is necessary to refer to the article of instructions to which it particularly relates.

Additional Article. (Translation.)

“ It is necessary that the two houses to whom General Lal-
 “ lemand will be addressed, be assured in the most positive
 “ manner, that the government of the United States will per-
 “ mit the free departure of the two frigates, as well as the
 “ enrolment of the men necessary to navigate them ; and that
 “ this operation, so important for the salvation of the coun-
 “ try, will encounter no obstacle, (*ne rencontrera aucun ob-*
 “ *stacle,*) either in the will of the government, or in the laws
 “ of the United States, (*ni dans la volonté du gouvernement,*
 “ *ni dans les lois des Etats Unis.*”)

We take the liberty to offer this translation, without further remark, in the place of that of the opposite counsel, who found an argument upon the words which they employ, “ that
 “ this operation will meet no opposition from the government
 “ or the laws of the United States.”

The language of the Deputies appears to us perfectly plain. The letter of the houses seems to be equally clear and unambiguous. We understand them to assert, that there was no law to forbid the building of the ships ; but that, nevertheless,
 “ to avoid all complaint from the governments of Europe,”
 (which might possibly give rise to an interference on the part of our government,) “ it would be proper to avoid a useless publicity ;” and that for the same reason, viz. “ to avoid all complaint from the governments of Europe,” they would give it to be understood that they were building the ships for Peru, and “ have their armament put on board as cargo.”

We beg our readers, before they proceed, to look at the letter itself,* and see whether it be susceptible of any other construction. If this be the true construction, then the houses deceived the Deputies in regard to the law, and employed their funds at an imminent hazard in direct violation of their instructions.

If this be so, can any body doubt that within a reasonable time after we discovered what the facts were, we had a right to recover back our money ? and if we preferred to recover the ships themselves, is it not plain that such flagrant ill faith

would materially affect the question of commissions? It is unnecessary to waste time in arguing whether it did not literally annihilate all rightful claim to commissions.

The arbitrators have professed to state the substance of the opening of the counsel for the Deputies. But they have forgotten to mention that that counsel distinctly stated this letter and the foregoing article of instructions, as the very foundation of the right to rescind the contract, which is admitted by Messrs. Emmet & Ogden. The arbitrators have spoken of the right to rescind the contract as "a cardinal point of the counsel of the Deputies." They have not forgotten the complaint with respect to closed doors; and but for the violation of instructions of which this letter was the principal aggravation, and the most striking evidence, the doors would never have been closed.

They have published many other letters entire, but in a report of the evidence in the cause, they have not even alluded to this. How shall we account for this? It is impossible it should have been forgotten. We shall now see how it was evaded. For this purpose it was necessary to give a new construction, and one which appears to us quite forced and unnatural, of the article of instructions from the Deputies which we have already quoted. They infer from "the language and spirit of that article" that the Deputies meant that the agents should "ascertain unequivocally that our government would refrain from any exertion of authority and secretly favour the enterprise." - But this was not enough for the defence of the houses; it was necessary to show that they had done this, which the arbitrators proceed to assert or imply, though without the least reason or evidence as we have already stated, and as will hereafter be more fully shown. Suppose it possible for a moment that the arbitrators were wrong and the houses right, in the construction which they put upon the article in question, when they said "*there was no law to forbid the building of the ships.*" Suppose the Deputies to have meant what they said when they inquired about "*the laws of the U. States.*" It would seem reasonable that the ordinary meaning of words should be attributed to the language of the Deputies, espe-

cially when it is considered that any other meaning is very inadequate to the purpose for which they were used.

But if the construction of the arbitrators had on the whole been the most reasonable, it would have been scarcely less necessary in fairness to state the opposite hypothesis, and the evidence connected with it; and thus submit the whole matter fairly to the judgment of the public.

We would gladly have dismissed this subject here, thinking the above letter its own sufficient commentary, and knowing that the incredulity of those who were fairly led to infer from the Report of the Arbitrators that there was no such letter in existence, (for such we understand there were,) must have been satisfied by the "Exposition" of Mr. Bayard. But the letter of Messrs. Emmet and Ogden, and the exposition of Mr. Bayard require and shall receive a satisfactory answer.

The first inquiry is, what did the Deputies mean when they instructed the houses before executing their orders to ascertain "that the operation would not encounter any obstacle either in the will of the government or in *the laws of the United States*?"

Let us place ourselves for a moment in their situation.

They were strangers to our country, to our language, and to the particulars of our code of laws. But they knew that this was a republican government, emphatically a government of laws, and that the general powers of the President must be, in most cases, limited and directed by positive law. Under these circumstances they framed their instructions, and the inquiry which they contain, in such a manner as to embrace the whole subject. What they desired to know, and what the nature of the case made it necessary they should know was, whether the government of the United States, or any person acting under their laws, would, or could, defeat the enterprise? and they used the plainest and most obvious language to elicit this information.

The counsel argue thus. The houses were ordered to ascertain that the government "would permit the sailing of the frigates," &c. Therefore, they knew "the government might

legally refuse to permit the sailing," &c. "Therefore, they knew that those acts were contrary to our laws."

We could hardly help smiling at this argument, if we did not know the respectable quarter from whence it came. Admitting it to be unanswerable, it would be to little purpose; for it matters not what the deputies knew of the law so long as they were ignorant that its provisions were such as to render it impossible that the houses should comply with the conditions upon which they were to purchase or build the ships. But we cannot admit that this argument proves any thing. It is certain that the deputies did not reason as the counsel have done. They must have understood by the permission of the government, such a permission as would be effectual, one equivalent to the license of a sovereign power, and not one which could be rendered nugatory by any wretch who should choose to file an information against the ships. Therefore, they could not have known of the existence of the law, which rendered it impossible, as will be seen hereafter, for the government to give such a permission.

If any thing more were necessary to show that the deputies were ignorant of the law, it may be observed, that the article of instructions in question seems to be added merely out of abundant caution; and that it is taken for granted, throughout the previous articles, that the expedition was not forbidden by our laws. One of the articles directs, that an application should first be made to purchase the ships from our government: another requires, that the officers shall take an oath here as to the faithful discharge of their duty: another declares, that the officers who should go out in the ships, and who were to receive commissions through the houses and General Lallemand, on entering into the Greek service, would necessarily be under Greek commanders.*

We come now to the question, whether the houses, to use the language of Mr. Contostavlos, "asserted in the most positive manner, that no law of the United States would be violated, and no risk incurred, by the building and equipment of

* Report, p. 9.

these frigates?" and whether they were guilty of wilful misrepresentation in so doing?

"Although *there is no law which forbids* the building of ships, nevertheless, to avoid all complaint from the governments of Europe, it is proper to avoid a useless publicity, and we will give it to be understood, that we are building for the government of Peru. In sending the ships to sea, their armament will be put on board as cargo. THERE WILL BE NO DIFFICULTY."

The counsel of the houses, after expressing their regret that the arbitrators had omitted this letter, say, "if you had set forth that letter, you should also, in justice to the houses, have stated the act to which it referred, and which shows, that every part of the paragraph is accurately true." An examination of the act will make the case appear much worse.

The first and second sections of the act of Congress forbid, under heavy penalties of fine and imprisonment, the acceptance of any commission, or any enlistment to serve against any country with which the United States are at peace.

The third section is as follows :

"If any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, *or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out and arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district or people, to cruise or commit hostilities against the subjects, citizens, or people, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanour, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years ; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof shall be forfeited ; one half to the use of the informer, and the other half to the use of the United States."*

The tenth section directs, that the owners of any armed

ship, sailing out of the United States, shall enter into bonds with sufficient sureties, prior to clearing out such vessel, in double her value and that of her armament, &c. ; that she shall not be employed by such owners to commit hostilities against the subjects, citizens, or property of any foreign prince or people.*

The eleventh section is as follows :

“ The collectors of the customs are hereby respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart from the United States, of which the *cargo* shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act.”†

Our readers are now fully prepared to appreciate the construction which Mr. Bayard and his counsel put upon the letter under consideration.

We may safely appeal to every honest merchant (for none such could doubt his obligation to make a most full and frank communication in such a case) whether, if he had been writing to a foreigner, in such circumstances, in regard to the foregoing law, he could possibly have written as the houses have done ? Whether his conscience would have been satis-

* It was under this section that Mr. Contostavlos was compelled, in a land of strangers, to find a bond with sufficient sureties in the penal sum of 600,000 dollars. The difficulty of furnishing this neutrality bond, which it was the imperative duty of the houses to furnish, and the equally imperative duty of the arbitrators to require from them, was so great, that it threatened, at one time, to become an insurmountable obstacle to the departure of the Hope. It is painful to contemplate the responsibility which the arbitrators thus took upon themselves, and the dreadful peril in which the enterprise was thus involved.

† Messrs. Emmet & Ogden plainly intimate, that by putting the armament on board as cargo, the transaction would have been rendered legal.

fied with the nice distinctions of the counsel? Whether he would have said, that there was no law to forbid the building of the ships, when the law forbade, under the penalty of forfeiture, being "concerned in the furnishing or fitting out"—the intent being the same in both cases. Whether he could have consented to represent that the armament might lawfully go out as cargo?* and if so, whether he would have considered such a representation a very "clear intimation," "that despatching such vessels fitted out and armed, would be illegal"? In short, whether he would have considered the simple declaration, that the "armament would appear as cargo" a sufficient disclosure of all the obstacles which the "operation" might "encounter in the laws of the United States"?

Our readers must be already tolerably well acquainted with Mr. Bayard's interpretation of this famous letter. We have already, in discussing another topic, made a considerable abstract from this part of the Exposition, which it is unnecessary to repeat.

The substance of Mr. Bayard's explanation is, that the Greek deputies were desirous of ascertaining the "feelings and intentions of our government respecting building of ships for their naval service; that it would have sufficed to inform them, that ships of war were building in all quarters of the union, and that our government had never seen fit to interfere. But that Gen. Lallemand, not choosing to rest satisfied with "the presumptions afforded by passing occurrences," addressed himself, before the deputies were written to, to higher sources of information, and ascertained, "by personal inquiries, that the operation about to be undertaken would meet no opposition from the government or the laws of the United States."

The result of this negotiation, together with an opinion which Mr. Bayard had formed upon an *informal conversation* with counsel, that the armament might go out as cargo *as matter of right*, was the substance of the information to the deputies in the letter of the 15th of April.

* Vide 11th section of the law authorizing the collector to detain the vessel, if *her cargo* shall consist principally of munitions of war, &c.

“This,” says Mr. Bayard, “is the substance of our information to the deputies ; from which it will be seen, that so far from asserting ‘in the most positive manner, that no law of the United States would be violated and no risk incurred by the building and *equipment* of these frigates for the aid of Greece,’ we confined ourselves to the security of the deputies in building, suggesting the shipment of the armament as cargo ; thus manifesting our apprehension of some risk in the actual equipment of these powerful ships in our ports.”

This explanation appears in itself to us absurd and incredible ; but if to any it wears the air of plausibility, we refer again to the indubitable evidence of Gen. Lallemand himself, by which it appears that Mr. Bayard’s interpretation rests altogether upon a transaction wholly fictitious.

We would beg leave to suggest to the ingenious author of Mr. Bayard’s Exposition, that before he appears again in defence of the houses, he will do well to examine all the documents relating to the subject, and thus, without trespassing unnecessarily upon them, provide sufficient scope for his ingenuity and imagination.

It will not be thought necessary after this to offer a serious reply to the argument of the counsel of the houses upon this point. Their distinctions between “legal and practical impediments,” between the legality of the building of the ships, and the illegality of their equipment, appear to us too shadowy and refined to afford a sheltering place for the veracity of the houses.* But we are not ambitious of dividing with Mr. Bayard the honour of demolishing the defence they had set up for him. He has done it so effectually as to leave not a wreck behind.

* Judge Livingston’s authority is introduced by the counsel to show that the law did not forbid the building of the ships. It did not appear in the case referred to, that the ships were built with foreign funds, nor even with the intent that they should be employed to commit hostilities against Spain ; consequently the case had no application to the one under consideration. This appears by a letter of Mr. Adams then secretary of State, to the Spanish minister, dated May, 21th, 1813.

Our readers will now judge whether Mr. Contostavlos spoke truly when he said that the letter of the 15th of April would “fix an indelible stain upon the integrity of the houses.”

The representation in the letter of the 15th of April, as to the legality of the enterprise, stands in striking contrast with their subsequent assertion of its illegality. To the allegation of Mr. Contostavlos in his Narrative, that the houses had set up the “known illegality of the transaction as a defence against the claim of the Deputies.” Mr. Bayard replies; “although Mr. Contostavlos avers that he has in his possession letters from the two houses furnishing conclusive evidence of the truth of this charge, I aver it to be false in the letter as well as the spirit. The *letters*” (Mr. Contostavlos refers to but one,) “alluded to are no doubt those which were written to the Messrs. Ricardos.”

There is one feature in this gentleman’s defence which strikes us as peculiar to himself. The boldness of his assertions seems always to be directly proportioned to the strength and clearness of the evidence to which they are opposed. Mr. Contostavlos refers to the letters of the houses in support of his charges, and in respect to that now under consideration he refers to their letter to Messrs. J. & S. Ricardo, of the 15th of February. Let us now see whether that letter does not fully sustain this charge, and afford the strongest confirmation of the Narrative of Mr. Contostavlos.

The letter of the Messrs. Ricardos to which that of the 15th of February is an answer, is totally misrepresented by Mr. Bayard. He says “a letter was received from Messrs. Ricardos, stating that the cause of Greece assumed a desponding aspect, and that the Deputies being about to send an agent to this country, they hoped that we would consider these vessels as the property of the subscribers to the Greek loan, who had lost severely—that the funds received for their building were provided by them—(Messrs. Ricardos,) and that they looked to the United States to protect their interests.”

Mr. Bayard adds, “in our answer we accordingly informed Messrs. Ricardos that if they attempted to interfere, the

“vessels would be seized. It will thus be perceived that the
“illegality of the transaction was not *set up against the claim*
“*of the Deputies, but to preserve and protect their claim.*”

Let the letter of Messrs. Ricardo and that of the houses speak for themselves. The Messrs. Ricardo, in their letter of the 14th of December, express their “unqualified astonishment at the magnitude of the sum” required, according to the information communicated by the houses in their letter to the Deputies of the 31st of October, and complain in strong terms, that the houses had so long kept the Deputies in ignorance of the cost of the ships; and they say that having been contractors for the Greek loan, of which they and their friends were large holders, they “cannot calmly look on and see so
“extravagant and wasteful an expenditure of the funds without expressing their disapprobation.” They then proceed, “we
“understand, that one of the Deputies proposes departing for
“America, with a view to make some arrangements relative to
“the frigates; we know not what his intentions may be, but
“as we have furnished all the funds for their construction, and
“have therefore some claim on them which the present state
“of affairs in Greece, and the probability of their being subdued by the enemy warrants us in endeavouring to enforce;
“*we trust that no plan for their disposal at a heavy loss will be*
“*entered into without our sanction*, and we are satisfied that in
“the situation in which we stand, you will see the propriety
“of this request. Any mode of making them available for
“*the service of Greece by sending them there, will meet with our*
“*concurrence*. We are, however, of opinion, that the first
“step to pursue will be to complete the building and launch
“them, for which the funds you already have will no doubt
“be sufficient. We can then consult with our friends here,
“and if the state of affairs in Greece will warrant it, we shall
“no doubt be able to make arrangements for the armament
“and equipment.” Thus it will be seen that a request that
no plan for the disposal of these ships at a heavy loss might
be entered into without the sanction of Messrs. Ricardo, accompanied with a declaration of their concurrence in any mode by which they might be made available to Greece, is

with characteristic ease converted by Mr. Bayard into a threat to interfere with the vessels ; and this threat was considered so alarming that it was necessary, forthwith, to protect the "claim of the Deputies" against it.

In answer to the above letter, the houses, after making explanations as to the cost of the frigates, say, they are pleased that one of the deputies is coming out to this country ; that if permitted by them, they will furnish minute accounts of every thing to the Ricardos ; but that they cannot imagine, what right the subscribers to a loan have to inquire into the expenditures made by the government contracting the loan ; and that the Ricardos are known to them only as the bankers of the deputies. They then add, " we must repeat, that as to the
 " ships we know only the deputies in the business, and *even the*
 " *Deputies cannot obtain possession of the vessels without our*
 " *consent ; for should an effort be made to seize them, they at*
 " *once become the property of our government, after our de-*
 " *mands are settled.*

" Should you feel however, a right to the avails of these
 " ships, in the event of their being re-sold, and will legally es-
 " tablish such a claim a regard to justice would naturally in-
 " duce us to do all in our power to promote your interest.
 " We trust that no obstacles will oppose their departure, &c."

It appears by the foregoing letter, that so far were the houses from protecting the ships against the claim of the Ricardos, that they were very willing, in the event of the re-sale of the ships, (the only event in which the Messrs. Ricardo sought to interpose their claims,) after providing for themselves, to promote to the utmost of their power, the interest of the Messrs. Ricardo. The houses spoke of the right of the deputies to get possession of the ships, and against that right they did set up the claim of illegality. It would, perhaps, have required more nerve to have made this communication directly to the deputies. If Mr. Contostavlos' statement was defective, it was so rather by reason of mildness than severity ; for he spoke only of their setting up the illegality of the transaction against the claims of the deputies ; and said nothing as to their gross misrepresentations of the law. There was an adequate motive for this de-

ception. If the law, which had been at first entirely concealed, had been fairly disclosed at this period, it would have furnished an instrument of redress against the houses.

Our readers will now see with what truth and modesty Mr. Bayard has preferred charges of falsehood, founded on what appears to us, the plain and inevitable construction of the letter of the houses ; and this may help them to decide what respect is due to his representations, as to the verbal communications on this subject, which passed between him and Mr. Contostavlos.

Before we entirely dismiss this topic of the illegality of the enterprise, we feel ourselves compelled, though with regret, to notice a very painful part of this transaction—the closing of the doors by the arbitrators.

These gentlemen, after assigning the reasons of their formal decision on this subject, say, “that in truth our meetings had never been made public ; and that several gentlemen were introduced by the respective counsel on both sides, by special permission of the arbitrators.” This is a mistake. During the argument of one of the counsel of the houses, a note was received from Mr. George Brinckerhoff, requesting to be present. As soon as it was read, Mr. Duer remarked, that we certainly considered the arbitration open to the admission of all respectable persons. To this no reply was made. And we certainly never requested the permission of the arbitrators to introduce any individual, until after their formal decision that the doors should be closed. Several other gentlemen besides Mr. Brinckerhoff, did attend the hearing, but he alone, as far as we know, under a special permission. Reasons certainly were not wanting why the houses should wish the protection of closed doors. The arbitrators feared the officers of the government, and common informers too ! So far as these apprehensions went, the parties might have been permitted to decide. The houses could not avail themselves of these, because they had secured the operation against these sources of danger : and it was our belief, that so far as these considerations went, the publicity of the transaction could not be increased. But the arbitrators thought, that “if the government had

winked at the proceeding, and lent their indirect aid to the enterprise, it would be ungrateful and dishonourable in the parties for whose benefit it was intended, to expose the conduct of the administration, and that it was a delicate question as between our government and foreign nations."

Our readers have already had a surfeit of this delicacy towards the government. Besides, we requested in vain that the doors might be opened, after the discussion on the question of rescinding the contract and of the illegality of the enterprise should be closed. We did not insist that the discussion should be public, as the arbitrators seem to represent, solely because the counsel for the houses had assailed the character and conduct of Mr. Contostavlos. We expressed a wish to have the same privilege which the opposite counsel had enjoyed, that of making known to the community our views of the case: and it was no satisfaction for the loss of this privilege then, nor is it any answer to our complaint now, that "about as many persons attended during the argument of Mr. Duer, as at any former period." Such were the impressions produced in our minds by this decision of the arbitrators, that we thought of abandoning the arbitration, and it was not until after a long and painful deliberation on the subject, that we could persuade ourselves to proceed with it.

Mr. Bayard's pamphlet is in the main not wanting in decorum of phraseology; but on the topic of falsehood, which called for most reserve, he observes no limits of abuse. For this, however, he had some apology. Unless he could convict Mr. Contostavlos of falsehood in regard to all the material allegations of his Narrative, he could not hope to escape universal reproach. This he has attempted with regard to many of these allegations, though without so much discrimination as might have been expected from so ingenious a writer; for he seems to have opposed his own veracity, with entire confidence, not only to that of Mr. Contostavlos, but to "*the original and authentic letters and documents,*" by which that gentleman truly declared that every part of his Narrative could be substantiated. The apology we have suggested for

Mr. Bayard, arises out of the urgent necessity of the case. Perhaps it might not have been thought strange that Mr. Bayard, who had promised to give out "that the ships were building for Peru," should undertake to moralise, with such elegant and facetious gaiety, about Mr. H. D. Sedgwick's apology for Mr. Contostavlos. But it was not to be expected, even from him, that he would venture to prefer against Mr. Contostavlos the charge of perjury. We hope that our readers will consider the apprehension that our silence might be misconstrued, a sufficient apology for replying to this charge. We shall do it with all possible brevity.

As appears by the Report of the arbitrators,* (which is sufficiently accurate for the purposes of the present discussion, with a single exception hereafter noticed,) Mr. Contostavlos testified, "that he arrived in London on the 28th or 29th of January, 1826. That the Deputies informed him that they had only about £250,000 in scripts, worth about £50,000 sterling. They said they were dissatisfied with the expenditures here. They ordered Ricardo to accept no more bills, and they gave him positive instructions to that effect. On cross-examination, he was asked how he could reconcile the testimony now given by him, with the statement made to General Lallemand and the two houses on his arrival here. With much embarrassment he admitted that the statement he then made to General Lallemand and the houses was untrue; and he said he was induced to make such false statement, because he thought it would promote the object of his mission."

The arbitrators seem to take for granted, as the counsel of the houses, or rather the senior counsel, (for he alone speaks on this subject,) certainly does, that Mr. Contostavlos testified truly.

Let us now examine the evidence which Mr. Bayard brings forward to support his charge of perjury. It consists of a letter of Messrs.† Ricardo, dated March 2d, 1826, to Messrs. Baring, Brothers & Co., and of two letters addressed by the

* Report, p. 35. † Exposition, p. 31.

Deputies to the houses, one on the 28th of March, the other on the 6th of April. The only material allegation in the first letter is, that the Messrs. Ricardo had no funds *then* in their hands at the disposal of the Deputies. Thus *their* having no funds in their hands in March, proves that Mr. Contostavlos perjured himself, when he swore that *the Deputies* themselves had funds in their hands, consisting of scripts, in January.

The letters of the Deputies must, to every intelligent reader, afford a strong confirmation of Mr. Contostavlos' Narrative. They held out at that critical period there, as Mr. Contostavlos did here, the language of conciliation. That the impressions and conduct of the Deputies were what Mr. Contostavlos has represented them to be, when they were first apprised of the enormous cost of the frigates, and when the first protested bills reached them, no man can doubt, after reading the extracts from their letters, and those of Messrs. Ricardo, which we have before quoted. In their letter of the 28th of March, they say—"If the frightful distress which
"exists in the commerce of this capital, had not thrown us
"into difficulties, we should long since have taken the neces-
"sary measures to discharge an obligation for an object of
"such vast importance." This is the only expression in both these letters, introduced with so much parade, which, by any torture whatever, can be in the slightest degree opposed to Mr. Contostavlos' statement or oath. And yet this expression certainly implies that they were then in possession of means, which the existing state of commercial distress alone prevented them from employing. This was not the period for crimination; and after so long an interruption of their correspondence, they could not avoid alluding to its cause. Their design was merely to do this, and to pass it over with as much delicacy as they could.

But whether this be or be not a just construction, we have in our possession conclusive evidence that no unfavourable influence ought to be drawn from these letters. It appears by a report of the committee of Greek bond-holders in London, made on the 4th of September last, which we have now before us in the Liverpool Mercury, that the deputies then had on

hand, the very £250,000 spoken of by Mr. Contostavlos, being part of the first loan, and which must have been at least of the value which he stated—and not only this, but that they also had £185,000 of the second loan.

To close and complete his exultation on this delicate topic, Mr. Bayard brings forward these letters of the deputies, written in the latter part of March and beginning of April, in aid of Mr. Contostavlos' negotiation; to falsify that gentleman's assertion that they had determined in December preceding, to break off, and did break off, all communication with the houses.

It is our duty to add, that Mr. Contostavlos stated on oath, before the arbitrators, that he had been frequently advised by the houses, in their verbal communications, to observe an entire secrecy in regard to the whole transaction, because it was illegal: and that he had been advised by an eminent professional gentleman, that he had no legal remedy against the houses, and that he must throw himself on their mercy. This statement was made in the presence of the individuals to whom he referred, and was not contradicted.

We should gladly have excluded from this discussion every topic relating to the compensation of the arbitrators. But justice to Mr. H. D. Sedgwick requires an explanation upon a single point of controversy between him and the arbitrators, or rather between him and Judge Platt, if that gentleman is to be considered the author of the Report.*

A paper was drawn up for the purpose of exempting the arbitrators from all responsibility as trustees, of which a copy is given in the Report. The arbitrators say, "they had no objection to receiving that explanatory declaration of the responsibility of their trust, but it was considered by them of little value or importance." Mr. H. D. Sedgwick states in his Refutation,† that that paper was given in consequence of a suggestion by the arbitrators of the risk attending the trust, and that it was received without an intimation of its insufficiency.

* Report, p. 8.

† Refutation, p. 4.

The counsel of the houses in their letter to the arbitrators, say of this paper, "it never was to the best of our recollection required, nor was the propriety of giving it suggested by either of you, nor was it the result of any arrangement with us."

The following frank acknowledgment of Mr. De Rham, confirms the statement of Mr. H. D. Sedgwick, who certainly had a right to infer, as is fairly inferable from the letter of Mr. De Rham, that his request was known to his associates, and that they were as well satisfied with the security as he was.

The following is an extract from the letter.

"TO JOHN DUER, Esq.

New-York, November 17th, 1826.

SIR,

Messrs. Emmet and Ogden in their letter to the arbitrators, contained in this day's Enquirer, state, that to the best of their recollection, the paper of the 28th June was never required, nor the propriety of giving it suggested by either of the arbitrators. As it is probable that this paper was drawn up in consequence of my refusal to serve as trustee, after my two associates had consented, I deem it proper to state to you, and to acknowledge that I did ask you for such a paper; and that on your assurance, I considered it as shielding me from any responsibility, not being then acquainted with the legal exceptions there might be to it. *But the counsel for the houses were not apprised of this*, and therefore thought that none of the arbitrators had requested this explanatory declaration of 28th June, and stated this their belief."

We are wearied with exposing the misrepresentations of Mr. Bayard,—but there are some remaining which must be noticed, and they shall be briefly despatched. Mr. Bayard says, that Judge Platt was nominated on the part of the deputies. This is not so. Judge Platt was first named in an informal interview between Chancellor Kent and Mr. R. Sedgwick, but his name was first suggested by Chancellor Kent, and instantly assented to by Mr. Sedgwick.

Mr. Bayard also declares, that he heard of no objection to Mr. Abraham Ogden, and that he does not believe, that any objection was made to him, before the publication of the Narrative. That gentleman's multiplied and intimate connexions with one of the houses, were pressed upon Chancellor Kent, as one of the counsel of the houses, as sufficient reason why he should not be retained as arbitrator, and Chancellor Kent afterwards informed Mr. R. Sedgwick, that the opposite parties would not consent to withdraw Mr. Ogden.

Mr. Bayard is very indignant at a most perverted interpretation by Mr. Contostavlos, of a letter of the houses, by which a declaration that "ships of war building for Mexico, Brazils, Colombia, and Peru, besides 15 frigates for the United States, occasion such an *activity in our ship-yards*," is made to refer to the ship yards of New-York, and not to those of the Union, and he asserts that it is "strictly true" in this latter sense. This he does, although but four frigates were then building in all the United States,* and although no ship of war was ever built here for Peru, as far as we can learn. But we forbear.

We now proceed to the consideration of those claims of the houses which the arbitrators rejected, most unwillingly, however, it seems from their Report, and not from any sense of their injustice, but from deference to some positive rules of law and evidence that were opposed to their admission. That the arbitrators have felt and expressed themselves as they have done in relation to these claims, we have already intimated is one of the strongest proofs that could have been given of the force and extent of the delusion under which they acted and wrote. But it is more than a strong proof; it is of itself evidence, complete and resistless, that they permitted their sympathies to overpower their judgment.

These claims, we believe, are not very generally or fully understood. They have, indeed, been frequently referred to, but their nature has not been distinctly stated, nor has the

* See the Report of the Secretary for the Navy for 1825, annexed to the President's Message.

evidence in relation to them been exhibited. The few words that the arbitrators have said on the subject, are calculated (we do not say, nor mean, intended) to mislead and deceive the public.

It was a mistake in the Narrative of Mr. Contostavlos, not to have assigned to these claims a more prominent place. The error must be corrected ; for the fact that they were advanced and persisted in, is by no means one of the least important in the controversy. It lends an additional credibility to every charge that has been preferred, and to every suspicion that has been intimated : it is a link in the chain of circumstantial evidence, that connects and supports our gravest accusations.

We begin with the claim of the Messrs. Howland to be remunerated by the Deputies for the loss they sustained by the failure of their banker, Mr. Williams. When the facts are stated, it will be seen that discussion and comment are unnecessary.

The Messrs. Howland, on the 23d of May, drew on the Messrs. Ricardo, in favour of Mr. Williams, for £12,500 stg. The monies were received by Mr. Williams, and remained as a fund in his hands, on which the Messrs. Howland drew at intervals, and in sums to suit their own convenience.—£7,500 sterling of this fund still remained unpaid at the time of Williams' failure. This failure took place on the 24th of October, five months after the Messrs. Howland drew on the Ricardos, three months after they were informed of the acceptance of their draft, and more than two months after it was actually paid. This loss the Messrs. Howland claimed should be paid by the Deputies ; and, by adding damages and re-exchange on their protested bills on Mr. Williams, they finally stated its amount at upwards of \$43,000.

The principle on which it was endeavoured to maintain this demand was, that agents are never responsible for losses not proceeding from their fraud or neglect. The Messrs. Howland, it was insisted, had the same right to deposit their funds with their banker in London, to be drawn on their bills of exchange, that they would have had to have placed them in a bank in this city ; in which latter case it was said to be clear,

that had a loss resulted from the failure of the bank, the Deputies must have sustained it. To this the reply was obvious, that there was no analogy between the cases ; that a deposit in the hands of a banker in London, was neither necessary in the execution of the trust, nor proper to be made at the risk of the Deputies, who were on the spot, without their consent ; that it was their evident understanding that their own bankers should retain the funds, until they were required for use in this country. As long as they remained in England, it belonged to them alone to determine to whom their confidence should there be given, and they had given it to the Messrs. Ricardo. That this answer was alone sufficient, we believe none will doubt ; but it was not the only answer, in fact, given to this extraordinary claim.

1. The Messrs. Howland, at an early period in their agency, expressed their wishes to the Deputies, that they should be permitted to draw on Mr. Williams in preference to the Ricardos ; and of course, that the Deputies should place their funds in the hands of Mr. Williams, to answer the drafts. In reply, the Deputies refuse compliance with this request, and declare that they had private reasons for deciding that their funds should remain with their own bankers, and the bills of the Messrs. Howland be drawn on them. After this, to place the funds in the hands of Mr. Williams at all, was to evade the intentions of the Deputies ; and to do so at their risk, was to compel them to agree to that to which they had, in plain terms, refused their assent.

2. The next answer will sufficiently appear, by the following extract from a letter of General Lallemand to the Deputies. It will be *felt* better without a preface. The letter was written on the 15th December, 1825, after information had been received of Mr. Williams' failure, and under the belief that by that event the Messrs. Howland had sustained a serious loss, which it was at least possible they would seek to charge on the Deputies. The General, after stating what bills had been drawn in favour of Williams by the Messrs. Howland, and giving the Deputies some good advice, proceeds thus : " Let us now see what is your situation as it respects the Messrs.

" Howland. When Messrs. Le Roy, Bayard & Co. and
 " Messrs. G. G. & S. Howland received the credit which you
 " transmitted to them, for the sum of £12,500 sterling,* on
 " the Messrs. Ricardo, and you directed them to draw in fu-
 " ture on that house, for such funds as the building of the fri-
 " gates might require,—in a conference between the Messrs.
 " Howland, Messrs. Bayard, and myself, respecting your
 " affairs, the Messrs. Howland objected that, as they had no
 " knowledge of the Messrs. Ricardo, they were desirous that
 " their credits should be opened on Mr. Samuel Williams,
 " whom they knew, and who had their confidence. I replied,
 " that the Messrs. Ricardo equally deserved their confidence,
 " and that we could not either change the credits, or under-
 " take to judge of the motives that had led you to fix them
 " as you had done, but must of necessity conform to your
 " wishes. They answered, that they would draw for the whole
 " amount of each credit on the Messrs. Ricardo, in favour of
 " Williams, with whom they would leave the funds on which
 " their particular drafts would afterwards be passed. I declar-
 " ed that they had an undoubted right to pursue that course
 " in their own affairs which they judged best ; but that, from
 " the time their bills should be paid by the Messrs. Ricardo, *the*
 " *funds must be at their risk, and upon their responsibility. They*
 " *agreed that this was just ;* and the Messrs. Bayard, who
 " drew upon the Messrs. Ricardo in favour of the Messrs.
 " Baring, declared from the first that they admitted them-
 " selves to be liable for all sums paid on their signature.

" It is therefore very certain that Messrs. G. G. & S. How-
 " land are responsible to you for all monies that they receiv-
 " ed from the Messrs. Ricardo on your account, and which it
 " has suited them to leave in the hands of Mr. Samuel Wil-

* There is here a slight error of recollection on the part of General Lal-
 lemand, but not at all affecting his statement. There was no credit trans-
 mitted for this sum ; but the houses drew under their construction of the
 Deputies' letter of the 5th of March. The period to which the General
 intends to refer this conversation, must therefore be when the houses were
 proceeding to draw by virtue of their supposed authority. This was about
 the middle of May.

liams. Whatever losses may result, proceed from their own acts, and ought to be borne by them only. Yet I fear that it is their design to throw them on you. Different circumstances have occasioned this fear, and some of recent occurrence, which show a conduct by no means open on the part of the Messrs. Howland, and disclose intentions against which it will be necessary to guard.”*

* “Maintenant voici quelle est votre situation à l’égard de Messrs. Howland.

“Lorsque Messrs. Le Roy, Bayard, and Co. et Messrs. G. G. & S. Howland requrent le crédit que vous leur adressâtes pour la somme de 12,500*l.* sterling, sur Messrs. Ricardo et que vous leur écrivîtes de tirer à l’avenir sur cette maison pour les fonds qui seraient nécessaires pour la construction des frégates dans une conférence ou nous traitions de vos affaires avec Messrs. Howland et Messrs. Bayard, Messrs. Howland objectèrent que ne connaissant pas Messrs. Ricardo ils désiraient que les crédits leur fussent ouverts sur Messrs. Samuel Williams qu’ils connaissaient et qui avait leur confiance. Je leur répondis que Messrs. Ricardo la méritaient également, qui nous ne pouvions ni changer les crédits ni nous rendre juges des motifs qui vous avaient portés à les régler comme vous veniez de le faire et qu’il falloit nécessairement s’y conformer. Messrs. Howland répliquèrent qu’ils tireraient pour la somme totale de chaque crédit pour Messrs. Ricardo à l’ordre de Samuel Williams chez qu’ils laisseraient les fonds pour fournir en suite leurs traites partielles sur lui. Je leur déclarai qu’ils étaient sans doute les maîtres de régler leurs propres affaires comme ils l’entendaient, mais que les fonds, du moment où ils avaient été payés sur leurs traites par Messrs. Ricardo, étaient sur leur garantie et leur responsabilité. Ils convinrent que cela était juste et Messrs. Bayard qui tiroient sur Messrs. Ricardo à l’ordre de Mr. Baring, prononcèrent dès le premier instant qu’ils se reconnaissaient toujours responsables pour toutes les sommes payés sur leur signature.

“Il est donc bien constant que Messrs. G. G. et Messrs. Howland sont responsables envers vous pour toutes les sommes qu’il leur a convenu de laisser chez Mr. Samuel Williams; toutes les pertes qui peuvent en résulter viennent de leurs propres opérations et ne doivent peser que sur eux.

“Je crains cependant qu’ils ne cherchent à les rejeter sur vous. Cette crainte m’est inspirée par diverses circonstances et par quelques traits tout récents qui annoncent, de la part de Messrs. Howland une marche qui n’est pas franche et des intentions contre lesquelles il faut être en garde.”

Mr. H. D. Sedgwick seems to admit (Ref. p. 40. note) that some doubt is thrown on this statement by the evidence given by Mr. Bayard before the arbitrators. Mr. Bayard stated, that he was present at the conversa-

The fears of General Lallemand were very soon realized. From his subsequent letters it appears, that the Messrs. Howlands at first believed their loss to be much greater than it finally appeared, and consequently they increased in the same proportion their demands on the Deputies. In what manner

tion in question, and that Mr. G. G. Howland was also present: that he, (Mr. B.) did make the declarations stated in the letter, but that he had no recollection that Mr. Howland said what is ascribed to him, and he added, that Mr. Howland did not speak French, and understood it, if at all, very imperfectly. In the possible doubt suggested by Mr. Sedgwick, we do not at all concur. We do not think, that our faith in the very minute account which General Lallemand has given of a conversation consisting of a series of questions and replies, ought to be shaken in the least by the evidence of Mr. Bayard. We shall not dwell on the reasons why, if there were a contradiction, the letter, written at the time, and under the circumstances, it was, should command our belief; but there is no contradiction. Mr. Bayard did not recollect what the General certainly did, and which, therefore, as certainly must have occurred. We are unable to perceive that Mr. Howland's not understanding or not speaking French, has any thing to do with the question. The question is not what he understood, but what General Lallemand understood, and that he did not understand Mr. Howland's English is not pretended. It was in English that Mr. Howland's reply was made. "I agree that this was just," and if it was made, it was a direct answer to what General Lallemand had before stated, and which therefore, must have been understood. Besides, if Mr. Howland does not understand French, and General Lallemand spoke French, who interpreted? For that General Lallemand had a conversation with Mr. Howland on the subject, in which they addressed each other, it is impossible to doubt, and even Mr. Bayard did not deny. We should think Mr. B. must himself have acted as interpreter. He was present—he took a part in the conversation, and made the same declarations that are ascribed to Mr. Howland. Had there been any error or misconception, Mr. Bayard, who understands both languages perfectly well, must have perceived and corrected it. Nor is this all. To guard against accidents, we may as well mention, that it appears very clearly from General Lallemand's letters, written in December and January, (of which there are several,) that Mr. Bayard entirely concurred at that time in General Lallemand's opinion, as to the great impropriety of the Messrs. Howlands' conduct in urging their Williams' claim, and we think it cannot be doubted that their opinions rested on the same grounds. We ought to add that by the consent of the opposite counsel, the letters of General Lallemand were agreed to have the same effect, as if the General had sworn to their contents. They were considered as sworn to.

they urged these demands, and in what manner they meditated to secure them, the following extracts will show. They are not multiplied beyond what is now the exigency of the case. The next letter of Gen. Lallemand is on the 19th of December ; it begins,* “ Since my letter of the 15th of this

* “ MESSIEURS,

“ Depuis ma lettre du 15 de ce mois expédiée par le packet du 16, j’ai appris positivement que Messrs. G. G et S Howland prétendaient que votre gouvernement devait supporter les pertes résultant de la faillite de Mr. Samuel Williams pour les sommes qui se trouvaient entre ses mains par suite des traites tirées sur Messrs Ricardo, pour la construction de vos batimens cette perte serait, du moins, de vingt-cinq mille livres sterling ; il y a même de fortes raisons pour croire qu’elle s’élèverait plus haut. Samedi dernier 17, j’ai appris que Messrs. Howland, sérieusement occupés de leur projet, consultaient des avocats et s’avisaient aux moyens d’atteindre leur but. J’ai vu de suite deux avocats, dont l’un, est le plus célèbre du barreau de cette ville, leur ai posé la question en leur répétant la conférence que je vous relatais dans ma lettre du 15 comme ayant eu lieu entre Messrs. Bayard, Howland et moi, au sujet du crédit du £12,500 que vous aviez assigné sur Messrs. Ricardo. Sur l’exposé que j’ai pu faire conformément aux renseignemens que je possédais, les deux avocats que j’ai vus n’ont pas hésité à prononcer, un opinion qui vous est entièrement favorable. Ils ont ajouté qu’il était impossible que Messrs. Howland trouvassent un avocat qui leur conseillât de poursuivre et ne les condamnât pas immédiatement.

* * * * *

“ Maintenant, pendant que Messrs. Howland chargent leur agent à Londres, de solliciter de vous de nouveaux crédits, ils parlent ici de vous faire supporter une perte de plus de vingt cinq mille livres sterling, pour laquelle ils se trouvent compris dans la faillite de Mr. Samuel Williams, ils parlent même du crédit de douze mille livres sterling sur Messrs. Ricardo, qui leur est annoncé par vos lettres du 15 October, comme devant couvrir les traites protestées qui leur reviennent de la faillite de Mr. Samuel Williams

“ Peut on douter, d’après cela que les nouveaux crédits que vous leur accorderiez ne servissent à les nantir, ne fussent employés à assurer leurs pretentions et à les rendre tellement maîtres de vos affaires que vous ne pussiez éviter les pertes qu’ils veulent réjeter sur vous ?

“ Non seulement je pense que vous devez laisser annuler les traités qu’ils ont tirés sur Messrs. Ricardo, à l’ordre de Mr. Samuel Williams les 22 et 31 October, et le 23 Novembre, sans leur accorder de nouveaux crédits, mais mon opinion est que vos intérêts exigent absolument que vos affaires soient retirées de leurs mains.

“ En conséquence de toutes les considerations précédentes, le credit de douze mille livres sterling, envoyé par Messrs. Ricardo et accompagné

“ month sent by the packet of the 16th, I have learnt positively that the Messrs. Howland claim that your government ought to sustain the losses resulting from the failure of Mr. Samuel Williams, to the extent of the sums in his hands, as the proceeds of bills drawn by them on the Messrs. Ricardo for the building of your ships.

“ This loss will be at least £25,000 sterling. There are even strong reasons for believing that it will exceed that amount. On Saturday last the 17th, I learnt that the Messrs. Howland, seriously engaged in executing their project, were consulting lawyers,* and considering about the the meass of effecting their object.

“ I called without delay on two lawyers, of whom one is the most celebrated at the bar of this city,† and asked their opinion on the question, repeating to them the conference which I related to you in my letter of the 15th, as having taken place between the Messrs. Bayard and Howland and myself on the subject of the credit of £12,500, which you had given them on the Messrs Ricardo. On the statement that I made, according to my knowledge of the facts, the gentlemen whom I consulted without hesitation pronounced an opinion in your favor. They added that it was impossible the Messrs. Howland should find a single lawyer who would advise them to prosecute their claim, and who would not instantly condemn them.” In a subsequent part of the same letter, he says, “ At present, while the Messrs. Howland are instructing their agent in London to solicit from you new credits, they speak here of compelling you to sustain a loss of more than £25 000 sterling, to which extent they are committed by the failure of Mr. Williams. They even speak of their right to apply the credit on the Ricardos, of £12,000

par la lettre du 15 Octobre n'a point été remis à Messrs. Howland et ne le sera point, à moins que vous ne donnez de nouveaux ordres très précis qui obligent à le leur liorer ”

* For which it will be remembered the arbitrators made the Deputies pay 100 dollars. See Mr. Sedgwick's Refut. p. 17.

† It is due to Mr. Emmet to say, that he did not appear as the advocate of the Messrs. Howland in relation to this claim.

“ which you announce to them in your letter of the 15th October, to cover their bills on Williams that were returned protested in consequence of his failure.”

The impression made at this time on the mind of General Lallemand, and the advice he deemed it necessary to give, appear by the passage immediately following :

“ After this, is it possible to doubt that, should you grant them new credits, they will only be seized and converted by the Messrs. Howlands to their own indemnity ?

“ They will be employed to secure their claims by giving them such a control over your affairs, that you will not be able to escape the loss which it is their design you should bear.

“ Not only do I think that you ought to permit their bills of the 22d and 31st October and of the 23d of November, drawn on the Ricardos in favour of Williams, to be protested, without granting them new credits, but I am further of opinion, that your interests absolutely require that your concerns should be withdrawn from their hands.”

We request a particular attention to the succeeding passage :—

“ In consequence of all these considerations, the letter of credit for £12,000 sterling, sent by the Messrs. Ricardo, and accompanied by the letter of the 15th of October,* has not been delivered to the Messrs. Howland, and will not be unless you give us new orders, so precise as to compel us to do so.”

The next letter of the General is of the 24th of December. In it he repeats his former information, and enforces his former advice ; and adds, that when the intelligence of Mr. Williams' failure was received, the Messrs. Howland refused, for some days, to make any further advances on account of the frigate under their care, and persisted in this refusal until they were advised of the new credit of the 15th of October,

* This letter, enclosing the credit, must have been addressed to the Messrs. Bayard, who, therefore, united with Gen. Lallemand in withholding the credit.

when their resolution was instantly (*tout à coup*) changed, with the obvious intent (as the General proceeds to remark and prove,) of using the credit to cover their loss ; he, therefore, in a subsequent part of his letter repeats his determination to withhold this credit, and adds, that had not the Messrs. Bayard been united with him in their intentions and views, the interest of the deputies must have greatly suffered.

3. The reader must now prepare for a change of scene. It will at once strike him, after what he has read, that General Lallemand could not deliver to the Messrs. Howland the letter of credit, that was withheld until their claim was most explicitly abandoned. The weighty reasons assigned by Gen. Lallemand for withholding this credit must have continued to subsist, in all their force, until the danger of its improper use had ceased to exist. We are, therefore, bound to believe, that General Lallemand would not have placed the credit in the hands of the Messrs. Howland, but from the entire conviction that their claims had been renounced and would never be revived. To have delivered it to them from any other motives, or under any other circumstances, would not merely have been inconsistent with the previous declarations of Gen. Lallemand, but equally so, we must be permitted to say, with his honour as a man, and his fidelity as an agent. But we are not left to conjecture on this subject. Gen. Lallemand shall again speak for himself. In his letter of the 24th of January, addressed to the deputies, he says :

“ I have already informed you, with scrupulous exactness, of the effects produced in this city by the failure of Mr. Williams, and of the dispositions manifested by the Messrs. Howland on the occasion.

“ Whether the anxiety of the Messrs. Howland has entirely ceased, in consequence of their having ascertained that their loss was much less than they originally supposed, or whether the advice they received satisfied them that their claims were unfounded, they now appear to have renounced all unjust pretensions, and every project contrary to your inter-

“ests. They no longer hesitate to make the advances which
“the work demands.”*

In a letter of the 16th of February, the General reminds the deputies, that he had previously informed them, that the Messieurs Howland had returned to the execution of their trust, and were making all the necessary advances. He adds, that they had continued to act in the same manner, and that the advances, which they had thus been compelled to make, having become considerable, it became just that they should receive the letter of credit for £12,000, which had been provisionally retained *whilst their views were hostile to the interests of the deputies*, and that the credit† had been accordingly de-

* “MESSIEURS,

“Je vous ai fait connaître avec une scrupuleuse exactitude, les résultats qu’ avait eus ici la faillite de Mr. Samuel Williams, et les dispositions que Messrs. Howland avaient manifestées dans cette occasion.

“Soit que Messieurs Howland aient moins perdu qu’il ne l’avaient, craint d’abord et que leurs inquiétudes se soient tout à fait calmées soit que les conseils qu’ils auront pris leur aient démontré et fait sentir que leurs prétentions n’étaient pas fondées, ils paroissent avoir renoncé à toutes prétentions injustes à tous projets contraires à vos intérêts, ils n’hésitent plus à faire les avances que les travaux exigent.”

† There is a mystery relating to this letter of credit which we are desirous should be explained. We shall state frankly our suspicions and the grounds on which they rest. It appears to us, from the above letters, that the credit was certainly not delivered before the 24th of January, and probably not until the 16th of February. Had it been delivered before the 24th of January, the fact would have been stated in the letter of that date; and it seems to us, that, in the letter of the 16th of February, the delivery of the credit is placed on the ground of advances made by the Messrs. Howland in the interval. We do not see that the terms of the letter admit of a different interpretation. Yet in the exchange account of the Messrs. Howland the bill drawn by them on the Messrs. Ricardo, by virtue of this letter of credit, and which certainly was not drawn until the credit was delivered, is stated to have been drawn on the 16th of January. But it will be asked, what motive can be assigned for thus ante-dating the draft? The motive unfortunately is too plain. If the bill was not drawn until February, it was drawn after the houses had received information of the non-acceptance of their bills of the 23d of November, and after they had received letters both from the deputies and from the Messrs. Ricardo, stating, that they considered the credit as already exhausted. It was then drawn, with a

livered.* We consider this letter as meaning to assert, that the hostile views of the Messrs. Howland had ceased, and those views related solely to the claim in question.

Such then was the nature of the loss which the Messrs. Howland sought to impose on the government of Greece—a loss of moneys drawn without right, on a pretence of a necessity that did not exist, placed in the hands of their banker against the wishes of the deputies and under an agreement that the risk should be their own. To be remunerated for this loss was their claim, a claim actually renounced—on the faith of its abandonment new means of obtaining funds delivered to them—revived after several months—and the property of their principals refused to be surrendered until it was satisfied.—SUCH WAS THE CLAIM reluctantly denied by the arbitrators, who “felt the hardship of the case,” and who, in their faithful report, place its rejection on a ground to which the counsel for the deputies scarcely adverted, and omit all those on which they actually relied—relied not merely to defeat the claim—we knew it could not be admitted—but to show the character and motives of those by whom it was advanced.

The damages on their protested bills is the only claim of the houses that now remains to be considered, and this we

certain knowledge, that acceptance would be refused, and with no conceivable design but of founding a claim on the Ricardos for the amount of the bill, or for damages on the deputies. This is one of the bills on which damages and re-exchange, to the amount of 30 per cent., were actually claimed. The original bill was not produced on the hearing; it remained in England, as evidence (so we are informed) in support of a suit against the Messrs. Ricardo.

* “MESSIEURS,

“Je vous ai informés déjà que Messieurs G. G. et S. Howland étaient revenus à la résolution de continuer à donner leurs soins à la construction de la frégate dont ils avaient accepté la commission et qu'ils faisaient tous les avances de fonds que les travaux exigeaient. Ils continuent à agir ainsi, les avances qu'ils sont obligés de faire étant devenues considérables il devenait juste aussi de leur remettre la lettre de crédit de douze mille livres sterling qui avait été envoyée pour eux, et revenue provisoirement lorsque leurs intentions annoncées étaient contraires à vos intérêts, cette lettre de crédit leur a donc été remisé.”

have purposely reserved as the last topic of our discussion. The aggregate amount of these damages (including the re-exchange at 10 per cent.) as charged in the account of the houses, is £16,500, that is seventy-three thousand two hundred and fifty dollars.*

Of the true character of this claim, we are persuaded that many of those who have taken an interest in this controversy have little apprehension. Indeed, the efforts to deceive the public in relation to it have been constant and persevering, and to a considerable extent successful; for the assertions of the houses have been circulated by the zeal, and aided by the sympathy of numerous friends upon whom those assertions have imposed. It is in relation to this claim that the insinuations of the "full and faithful report," are the most artful and fallacious, and the allegations of Mr. Bayard the most bold, unqualified, and imposing. It is by these means that a conviction has been produced in the minds of many that the claim for damages was fair and justifiable, and that in preferring it the houses were seeking only an indemnity against losses which they had in fact sustained, or to which they were exposed.

The statement of Mr. Bayard is as follows: "Our claim for damages on the protested bills was founded on the fact, that *those bills were drawn by the two houses on their respective correspondents*, against, and with a specific view to the funds to arise from the bills on Ricardos, and which for want of confirmed credits we deemed it unsafe to negotiate on them direct. As the former were protested in consequence of the protest of the latter, and the drawers were thus made liable for damages, we considered ourselves justly entitled to indemnification. The arbitrators upon strict legal principles thought otherwise." (Exp. p. 24.) To characterise this statement we shall not borrow any of the epithets which Mr. B. has so lavishly applied to Mr. Contostavlos. If they are applicable, we have lost the disposition to apply them; but our obligations to state the truth, and the necessity of stating it, no events have occurred to affect.

* See appendix to Mr. Contostavlos' Narrative, No. 1 & 2.

The statement of Mr. B. asserts or implies,

That the bills on which the damages were claimed, were drawn by the houses on their respective correspondents, not on the Ricardos, the bankers of the Deputies.

That these protested bills were drawn on the faith of the acceptance or payment of former bills drawn by the houses on the Messrs. Ricardo, and with a specific view to the funds thus to arise.

That the protest of the bills on which the damages were claimed was a consequence of the protest of the bills on the Ricardos.

That the houses were thus rendered liable for damages, &c. to the whole extent of the sum which they claimed, and sought nothing more than a bare indemnity.

That these facts were all fully proved before the arbitrators, who rejected the claim, not from any doubt as to the loss sustained by the houses, but because on strict legal principles they did not think them entitled to an indemnity.

We now request the attention of our readers to a brief exposition of the case according to the facts and the evidence.

1. The bills on which the damages were claimed were four; two, (one drawn by each house) of £15,000 sterling each, drawn on the 23d November; one drawn by Le Roy, Bayard & Co. on the 15th of December for £13,000, and the last by the Messrs. Howland, charged in their account as drawn on the 16th of January, probably drawn on the 16th of February, for £12,000 sterling. These bills were all drawn on the Ricardos, and were remitted by the houses to their respective correspondents for collection.

2. None of these bills were the houses authorized to draw, and the two last were drawn under circumstances that precluded all reasonable expectation of their acceptance. The bills of the 23d of November were drawn without a confirmed credit, on the usual allegation, that the proceeds were required to meet advances; when such was the extent of the funds which the houses had then in hand, that they remained unexhausted by payment,*

* We refer our readers to the interest accounts, No. 1 and 2 Appendix.

for more than five months after this period. The two last bills, it is true, were pretended to be drawn under confirmed credits from the Ricardos, the credit of the 15th of October. But since the date of these credits, the Ricardos had accepted bills of the houses for double the amount. The houses knew, therefore, that the credit was exhausted, and before the last of these bills was drawn, it was also known that the credits were considered, both by the deputies and the Ricardos, as satisfied. Their letters say so in plain terms. Before this time, also, the letter of the Messrs. Ricardos of the 30th November,* and we fully believe, that of the 14th of December, had been received. It was impossible to read these letters and not be convinced, that, without an investigation of the application of the monies already sent, no further payments would be made by the Messrs. Ricardos, on account of the frigates. The very manner in which the houses drew, shows that they had no confidence in the acceptance of their bills. All their other bills drawn against confirmed credits, to use the commercial phrase of Mr. Bayard, were “negotiated direct;”—these alone were remitted for collection. In relation to the last bill, we add a circumstance, which to many will seem slight, but of which our commercial readers will feel the force, There was no letter of advice to the Messrs. Ricardo, on whom it was drawn.†

3. There was no evidence adduced to the arbitrators, that either of the houses had drawn a single bill on their own correspondents against the bills on the Ricardos, or, in the language of Mr. B., with a “specific view to the funds to arise from those bills.” There was, therefore, no proof that any portion of the damages which the houses claimed from the deputies, had been paid by them; or that for such damages they were, or could be rendered liable. The arbitrators say, “the proof on this subject was defective;” this is again unfair; it is calculated to make an impression opposite to the

* These are the letters of which we have before given copious extracts.

† Why, it may be asked by some, were the bills transmitted at all, if payment was not expected? We leave our readers, who have accompanied us thus far in the examination, to answer the question. If they are not now prepared to answer this, and all similar questions, our labour has been in vain, and we have written under a delusion.

truth. There was no proof whatever, unless the arbitrators meant by the terms "defective proof," to refer to the assertions of Mr. Wm. Bayard and of one of his counsel. These were indeed very confident and very frequent, but were always met by an express denial of the facts asserted, and by a demand, that proof should be produced. One or two bills of exchange were at last produced, which were *said* to have been drawn against the bills on the Ricardos, and on which damages were *said* to have been paid; but of these facts, no evidence was given, and the bills, (which were for a small amount,) after the lapse of a day or two, were withdrawn. The claim for damages was rested by the counsel for the houses, in summing up, exclusively on the ground that will hereafter be mentioned.

4. We do not hesitate to avow our entire belief, that no bills had, in fact, been drawn by the houses, or either of them, on their correspondents, for the payment of which they relied on the funds to arise from the bills on the Ricardos. We believe that they had never paid, or become liable to pay, a single dollar of the damages which they claimed. If their bills thus drawn, had been protested, they must have been returned to them. Why were they not produced? And if it had not appeared on their face, that they were drawn with a specific view to the funds to arise from the Ricardo bills, that proof might have been supplied by the production of their letters of advice (or authentic copies) to their correspondents, announcing their drafts, and specifying, of course, the funds out of which they expected them to be paid. We should not have objected to this proof, as they well knew. It was the very species of proof which the Messrs. Howlands had produced in support of their claim for the loss sustained by the failure of Williams. They produced several protested bills which they had drawn on Mr. Williams, and copies of the correspondent letters of advice, which stated uniformly, that the bills were drawn against the fund of £12,500, which their correspondent had received from the Ricardos, on their bill of the 23d of May. If they had drawn in the same manner against the bills on which the damages were claimed, the same evidence of the fact must have existed, and would have been produced.

Nor is it merely on this refusal to produce the requisite proof that we found our disbelief of the facts asserted. There is another reason, if possible, still more conclusive. The protested bills on the Ricardos were all of them protested for non-acceptance. If, therefore, the houses drew on their own correspondents, with a specific view to the funds to arise from those bills, they must have drawn, whilst they were yet uncertain whether they would be or had been accepted; yet by drawing in this uncertainty, they would have defeated the sole object they had in view, in remitting their bills for collection, instead of negotiating them direct. *They would have incurred the very risk they meant to avoid.* When they drew on confirmed credits on which they relied, they did not remit their bills, but sold them. Why so?—because they relied on the guaranty of the house, granting the credit, to protect them against damages. When they draw without confirmed credits, they remit for collection—with what view? Evidently to avoid the risk of the damages to which the protest of their bills would have exposed them, had they sold them. This, indeed, Mr. B. himself confesses, where he says, “we deemed it unsafe to negotiate direct without confirmed credits;” but it is manifest that to negotiate direct their bills on their own correspondents, would have been equally unsafe, until they were informed of the acceptance of those remitted for collection; for on the acceptance of the latter, as they themselves confess, the fate of the former depended. They knew that their correspondents would not accept, unless the Ricardos had accepted. We do not, therefore, believe, that having remitted their bills for collection to avoid the risk of damages, the houses were guilty of the inconceivable folly of proceeding without delay to expose themselves to the same risk on other bills of the same amount.*

5. The ground on which the counsel of the houses finally and exclusively rested their claim to the damages, was that

* On the 22d of October, Messrs. Le Roy, Bayard & Co. drew on the Ricardos without a confirmed credit for £10,000 sterling, and remitted for collection, but omitted to draw on their own banker against this bill until the 24th of December. This appears from their exchange account in our possession.

they were entitled to them as a compensation for the very serious injury which their mercantile credit had sustained by the repeated dishonour “of their bills on the great theatre of London, in that crisis of panic and alarm in the commercial world.”*

And to compensate this injury, they claimed the same sum that their clients might have been entitled to, had they actually been compelled to pay to others the damages they claimed from the deputies. We have said in our preliminary remarks, that the allegation that the credit of the houses had been or could have been injured by the protest of bills remitted for collection, was on its face impossible and absurd. The terms may seem harsh, but being true, they are demanded by the occasion, and we feel ourselves compelled to repeat them. To injure the credit of a merchant, is to excite doubts of his solvency—to create a belief of his embarrassment. In the mind of what human being could such a suspicion or belief have been produced, as it *respects the houses*, by the protest of bills, for the payment of which they had neither engaged nor were expected to provide, and the dishonour of which involved them in no responsibility to a single individual? A debtor in England authorizes a merchant, his creditor in this country, to draw for the debt. The creditor, from motives of prudence, remits the bill for collection. Does the refusal of the debtor to pay, *his* violation of faith, or defect of means, affect the mercantile credit of the merchant drawing? The supposed case, one of not unfrequent occurrence, and that of the houses, are exactly parallel, except that the houses in drawing acted under an authority never conferred, to obtain moneys which they had no right to receive.

What then, (for we believe our readers are prepared to join in our meditated reply) what then were these damages?—this claim for an indemnity, which the arbitrators must have allowed, had not the cold and rigid rules of law checked the current of their sympathy? They were a bold, a very bold attempt at extortion.—A very bold attempt, without a shadow

* Such is the language which the delusion of the arbitrators has led them to employ! This, it seems, was one of their reasons for allowing the banking commission.

of right, a colour of justice, to add more than \$70,000 to the exorbitant profits which the houses had already charged. With no probability of success, no semblance of decency, could this additional sum be claimed as commissions. Such commissions, as this addition would have made them, not even a stranger, ignorant of our usages, could have been found to justify. But the courage of these faithful agents, these devoted patriots, was not easily repressed ; they had not yet given sufficient proofs of their "sympathy in favour of a gallant and oppressed people." Had they contented themselves with that small portion of the resources of Greece which they had already claimed, their desire "of animating instead of repressing the generous feelings of their countrymen in a cause dear to the hearts of freemen in every quarter of the globe," might have been drawn into question. What cannot therefore be claimed as commissions, is sought to be recovered under the false name of damages ! DAMAGES WHERE NO WRONG HAD BEEN COMMITTED, NO INJURY SUSTAINED, NO LOSS INCURRED !!

Our task is now performed. We have discharged a most painful and ungrateful duty. Had we consulted our private interests, still more, had we listened to our private feelings, we should have remained silent ; but compelled by paramount motives to speak, we do not perceive upon a careful review of what we have written, that we could have spoken otherwise than we have. That we have written with a deep sense of the injustice that has been committed, and not without resentment at the means that have been used to justify or conceal it, we do not deny ; but of the opinions that we entertain and have endeavoured to enforce, these feelings, it must be remembered, are not the *cause* but the *effect*. That passion or prejudices of any kind, have had any share in producing our convictions on the merits of the case, we are not conscious. These convictions have been slowly and reluctantly admitted, and seem to us the necessary result of the evidence that it has been our duty so repeatedly to examine.

Certainly we have had no unworthy motives for the course we have pursued. Against the charge of having been actuated by a low desire of notoriety, a mean passion for popularity, if the character of the journal in which it was preferred

be not our sufficient shield, we hope we may appeal to our known sentiments and habits, and to the history of our lives.

That we have been governed by feelings of personal dislike or animosity towards the arbitrators, they cannot themselves believe. We have said that no gentlemen could have been selected in whose integrity, in our judgment, a more entire confidence was to be reposed, and few, we will now add, whose private regard we were more willing to retain or acquire. Between one of the arbitrators and one of us, there subsisted relations of a very peculiar nature. He was not merely a client, whose entire confidence, the counsel who now speaks believed that he possessed, but he was a friend, whose friendship, for a thousand reasons, he was desirous to cultivate and preserve—a friend, not only esteemed and beloved for his own worth, but perhaps still more so from his very intimate connexion with those, with whom some of the best and purest, and most fondly cherished recollections of the writer's life are, and must for ever remain associated—treasures of memory and affection that time can never diminish. To those friends he does not know that any other mode is now left to him of conveying his feelings, the assurance that the idea of the pain *they* might suffer, and *he* inflict, has been to him a source of very sincere and serious affliction—they will understand, and they will believe him, they will believe that the reasons of his conduct have at least appeared to him such, as he was not at liberty to disregard, and they will not sacrifice the friendship of years because circumstances imposed duties on their friend, from which, without a change of his principles and his nature, it was impossible to shrink.

On the causes of the unexpected and unfortunate award, there has been much speculation. It is with no false modesty we assign as one of the probable causes, the disparity between ourselves and the counsel who appeared to vindicate the claims and pretensions of the houses. We refer not merely to our inferiority in professional talent, but still more so in authority over the minds of the arbitrators, a power that age, and long established reputation, can alone confer.

We doubt not that the speech of Mr. Emmet, his very skilful and eloquent representation of the state and prospects of Greece, his artful insinuations as to the motives of Contostav-

los, the Ricardos, and others, made a deep impression on the minds of the arbitrators.

The counsel of the houses, in their published letter, have intimated an opinion, that "no succours can now be serviceable to Greece," and this opinion, Mr. Emmet sought to enforce before the arbitrators, with all that powerful and fertile ingenuity, which the interests of his clients seldom fail to command. We are afraid that the arbitrators embraced these views; that their minds were thus turned from the consequences of their award, and withheld from reflecting on the magnitude of the interests committed to their decision. They were not improbably led to view the controversy as relating to the distribution of a fund in which the government and people of Greece had little interest, and they preferred the claims of our own citizens to the supposed demands of the Ricardos, and the bond holders in England. Nothing, according to Mr. Emmet, could be more irrational, more chimerical, than the expectation that Greece would be able to assert or maintain her independence. It was a visionary hope in which the young might indulge, but which age and wisdom were compelled to reject. The fate of Greece, he declared, was already decided. The contest was over, the spirit of vitality had fled, and it was vain to think it would ever be recalled—"Greece was already a corpse, and the pretended zeal of her friends was but the clamour of the vultures hastening to their prey."

For ourselves, in listening to Mr. Emmet, never for an instant did we confound the advocate with the man. He is the last man to preach the lessons of despair in the cause of freedom, and his sinister prophecies we felt were not to be reconciled with the sentiments and history of his life. He spoke as he was instructed; he represented the wishes of those by whom he was employed, and his voice did but repeat the croaking of some of those ill omened birds of prey, the ravenous and boding vultures, to whom he had alluded. Had he followed the suggestions of his own generous nature, his predictions would have been conceived in a very different strain.

Had it been his fortune to address the arbitrators as he believed and felt, instead of seeking to blast with the mildew of heartless ridicule their best affections, how would he have warmed their hearts, and exalted their hopes, by unveiling the

glories of emancipated and triumphant Greece. 'Dark and desperate (he would have exclaimed) as the state of Greece may appear, there is still light, there is still hope—still light to those who have eyes to see—still hope to those who have the hearts and the courage to embrace it. A nation animated by that determined resolution to be free, which the Greeks in their struggle have evinced, may be exterminated, cannot be subdued. There is still light, there is still hope, as long as there is a city, a fortress, a mountain, a fastness, an isle, to which soldiers and patriots may resort, and whence, when the storm is past, they may issue forth to reclaim their rights, and to avenge their wrongs. It is not, it cannot be, (he would have pursued,) it cannot be the design of Providence, that a race so noble should be extinguished—no, it is for high purposes they are reserved; it is by calamity they are to be fitted to fulfil their destiny; it is in the school of adversity and suffering they are acquiring those lessons of patience, fortitude, and wisdom, which in that school alone are effectually taught. Greece shall still be free! the lights of freedom, of science, of religion, shall be rekindled to burn with a pure and a permanent lustre; their rays shall in time extend to the furthest east, and the desolate shores of Africa and Asia shall soon participate and rejoice in the splendour.'

All, this, said by him, enforced, expanded, illustrated by him, (as true an orator as a country fertile in orators has ever produced,) would have reached the hearts of those whom he addressed. The arbitrators would have been wakened from their delusion; the voice of duty and conscience would have been heard; the claims of justice and humanity have been satisfied.

AS IT IS, AMERICA OWES AN INDEMNITY
TO GREECE.

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DESC:

rlandos and Andreas Luriottis. Interest Cr.
15th of each month.

N.	Amount.	Disbursements more than Funds.		Time.	Interest.
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do.	12,152 71			398	940 47
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do.	31,592 10			245	1,505 00
do.	46,813 02			215	1,957 03
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APPENDIX.

No. I.

DR. *Messrs. Le Roy, Bayard & Co. in account current and interest (at 7 per cent.) to July 18, 1826, with Jean Orlandos and Andreas Luriottis. Interest* Cr.
calculated 360 days to the year, as in other accounts, and on the disbursements from the 15th of each month.

DATE.	DESCRIPTION.	Amount.	Surplus Fund in the respec- tive months.	Time.	Interest.	DATE.	DESCRIPTION.	Amount.	Disbursements more than Funds.	Time.	Interest.
		Dolls. cts.	Dolls. cts.	Days.	Dolls. cts.			Dolls. cts.	Dolls. cts.	Days.	Dolls. cts.
1825.						1825.					
May.....14	To bills on S. Williams, (confirmed credit,) L.25,000 stg. (rate of exchange not given)	113,500 63		430	9,907 96	May....	By amount of disbursements this month	13,364 35		429	1,114 80
23	" Bills on Ricardos, (credit not confirmed,) L.12,500 stg. a 6 pr. ct. advance.....	52,888 88	164,025 16	421	4,820 70	June....	do. do. do.	12,152 71		398	940 47
June	Surplus funds this month.....		151,872 45			July....	do. do. do.	10,000 00		368	715 56
July.....	" " " "		141,872 45			August..	do. do. do.	24,008 84		337	1,573 24
August.....	" " " "		117,863 61			Sept....	do. do. do.	29,983 44		306	1,784 01
Sept. 3, 6, 7,	" Bills on Ricardos, (credit confirmed,) £12,245 17s. 2d. stg. a 7½ pr. ct. advance.	58,644 04		315	3,591 94	October..	do. do. do.	51,162 03		276	2,745 69
say 6th	710 0 0 " a 9 " "	3,439 55	149,963 76	307	205 31	Nov....	do. do. do.	31,592 10		245	1,505 00
13 & 15 say 14	2,044 2 10 " a 9 " "	9,902 70		284	546 85	Dec....	do. do. do.	46,813 02		215	1,957 03
October... 7	10,000 0 0 " a 9½ " "	48,555 55		264	2,492 51	1826.					
27	15,000 0 0 " a 9½ " "	73,000 00	230,259 98	260	3,690 55	January..	do. do. do.	66,966 21		184	2,395 89
November ..	Surplus funds this month		198,667 88			February..	do. do. do.	30,742 34		153	914 87
December ..	" " " "		151,854 86			March....	do. do. do.	19,059 30		125	463 23
1826.						April....	do. do. do.	15,057 72		94	275 21
January ...	" " " "		84,888 65			May....	do. do. do.	12,883 35		64	160 38
February ...	" " " "		54,146 31			June....	do. do. do.	10,765 83	3,624 89	33	69 06
March.....	" " " "		35,087 01								
April.....	" " " "		20,029 29				Balance of interest carried to acct. Dr.				
May.....	" " " "		7,140 94				Balance of account carried forward.....	5,016 79			
							The sum of \$20,000 charged in their acct. as paid in May and June 1825, is in this acct. divided equally between the two months.				
July... ..18	" By balance of interest.....	370,931 35			25,255 82		The items in their account paid, or supposed to have been paid, that are without dates, are put down in the disbursements of June 1826				
		8,641 68									
		379,573 03			25,255 82			379,573 03			25,255 82
July.....18	To balance of account bro't forward	5,016 79					By a mount of demands assumed by Messrs. Le Roy, Bayard & Co. and charged in their account, but which do not appear to have been paid.....	23,013 67			
							Messrs. Le Roy, Bayard & Co. and G. G. & S. Howland's commission.....	39,757 00			
								62,770 67			

* These two sums—374,556 24 and 62,760 67—added together, make the total of their account, except 5 cents error.

and Andreas Luriottis. Interest calculated 360 Cr.
15th of each month.

15th of each month.

[illegible]

No. III.

New-York, 15 Avril, 1825.

MESSIEURS,

L'arrive du General Lallemand nous a mis en possession de la lettre que vous nous avez fait l'honneur de nous adresser le 5 Mars, renferment les credits de Mons. S. Williams de cinquante mille pounds sterling en deux parties de 25m pounds chèque dont nous devons faire usage separement, quoique a tout autre egard nous devons agir d'accord pour le plus grand avantage de la nation Grecque,

Immédiatement à la reception de votre lettre nous nous sommes adressé à l'un des commissaires de marine ; ce department est composé de quatre de nos officiers les plus estimés, du plus haut grade et ayant de l'influence, ils dirigent tout ce qui est relatif a la marine—c'est en confiance que nous nous sommes adressés à l'un d'eux, et avons ainsi que nous le craignons été prevenus que le gouvernement ne vendroit aucun de ses batimens et ne prêteroit aucune partie de ses bois de construction a moins d'y etre autorisé par un acte de Congrès qui demanderoit 8 à 9 mois de delay. Le Congrès n'étant pas actuellement en session—une pareille demande à été faite pour les gouvernemens de Columbia et du Mexique, et quoique leur independence soit reconnue par ce pays, leur ministres ont été prevenus que leur demande seroit refusé et leur projet à été abandonné. La position de la Grèce est différente ; notre gouvernement se refusera à toute acte qui pourroit conduire à des difficultés et quoiqu'il n'y aye aucune loi qui empêche la construction de batimens, pour eviter toute plainte des gouvernemens d'Europe, il convient d'eviter une publicité inutile et nous donnerons à entendre que nous faisons construire pour le gouvernement du Perou, en envoyant les batimens à la mer leur armement sera mis abord comme chargement, il n'y aura aucune difficulté, et les batimens pourront etre assures à une prime tres basse que nous croyons n'excedera pas 2 ou 3 per cent. pour un et peut-être deux ports. Malheureusement pour la cause de votre pays, l'ordre à été trop retardé pour que les batimens puissent etre employés cette campagne. Le grand nombre de batimens de guerre en construction pour Colombia, le Perou, le Mexique, et le Brézil, et 15 frégates pour le gouvernement des Etats Unis, occasionnent une telle activité dans nos ateliers, que nos batimens ne pourront etre constru-

No. II.

Dr. *Messrs. Howlands in account current and interest to July, 1826, (at 7 per cent.) with Jean Orlandos and Andreas Luriottis. Interest calculated 360 days to the year as in the other accounts. Interest on disbursements from 15th of each month.* Cr.

DATE.	DESCRIPTION.	Amount.	Excess of Funds over disbts. in the months ag't. the sums set down.	Time.	Interest.	DATE.	DESCRIPTION.	Amount.	Excess of disbts. over funds in each month as placed against	Time.	Interest.
		Dolls. cts.	Dolls. cts.	Days.	Dolls. cts.			Dolls. cts.	Dolls. cts.	Days.	Dolls. cts.
1825.						1825.					
May ... 13	To bills on S. Williams, (confirmed credit,) £3,000 stg. a 6½ pr. ct. adv. ...	\$14,200 00		431	1,190 04	May ...	By amount of disbursements this month.....	22,557 72		429	1,881 70
18	14,000 „ a 6½ do. ...	66,422 22		426	5,501 95	June ...	do. do. do.	15,892 71		398	1,229 94
21	4,400 „ a 6 do. ...	20,728 88		423	1,704 94	July ...	do. do. do.	33,319 49		368	2,384 18
24	2,100 „ a 6 do. ...	9,893 33		420	807 94	August ...	do. do. do.	26,300 00		337	1,723 40
28	1,500 „ a 5½ do. ...	7,033 33		416	568 91	Sept. ...	do. do. do.	32,208 42		306	1,916 39
23	“ Bills on Ricardos (cred. not confi.) £12,500 stg. a 6 pr. ct. adv. ...	53,888 88		421	4,820 71	October ...	do. do. do.	42,456 07		276	2,278 47
		177,166 64	154,608 92			Nov. ...	do. do. do.	50,675 68		245	2,414 15
June ...	Surplus of funds this month.....		138,716 21			Dec ...	do. do. do.	33,892 76		215	1,416 90
July ...	do. do. do.		105,396 72			1826.					
August ...	do. do. do.		79,096 72			January ...	do. do. do.	30,096 91		184	1,076 79
Sept. ... 9	“ Bills on Ricardos (confirmed) £3,500 stg. a 7½ pr. ct. adv. ...	\$16,761 10		312	1,016 84	February ...	do. do. do.	29,835 51		153	887 60
27	1,500 „ a 9 do. ...	7,266 66		294	415 41	March ...	do. do. do.	21,433 75		125	520 91
	s. d.	24,027 76	70,916 06			April ...	do. do. do.	20,290 02		94	370 84
October 11	854 7 6 a 9 do. ...	4,138 95		280	225 35	May ...	do. do. do.	19,054 11	6,638 21	64	237 10
18	2,127 10 2 a 9½ do. ...	10,353 87		273	549 62	June ...	do. do. do.	10,270 61	15,908 82	33	65 90
20	1,000 0 0 a 9½ do. ...	4,866 66		271	256 41						
24	6,018 2 4 a 9 do. ...	29,154 40		267	1,513 60		Balance of interest carried to account Dr.				18,404 27
											6,403 55
	15,000 0 0										
22	“ Bills on Ricardos (not confirmed) £10,000 stg. a 9½ pr. ct. adv. ...	48,666 66		269	2,545 54		The items in the account to which no dates were affixed are included in the disbursements for June, 1826.				
31	15,000 „ a 9½ do. ...	73,000 00		260	3,690 56						
		170,180 54	193,640 53								
November.	Surplus of funds this month.....		147,964 85								
December.	do. do. do.		114,072 09								
1826.											
January ...	do. do. do.		83,975 18								
February .	do. do. do.		54,139 67								
March	do. do. do.		32,705 92								
April	do. do. do.		12,415 90								
July 18	“ Balance of interest	6,403 55									
		377,778 49									
	Balance of account carried forward	10,505 27									
		388,283 76			24,807 82			688,283 76			24,807 82
						July 18	By balance of account brought forward.....	10,505 27			
							“ amount of sundry demands charged in their account as assumed by them but not paid	17,531 59			
							“ Le Roy, Bayard & Co. and Messrs. Howland's commissions.....	40,551 85			
								68,588 71			

its et prêts à mettre en mer, en moins de six mois. Dans le même espace de temps les huit frigates pourroient être construites et être prêtes pour la campagne prochaine et à temps pour que les équipages s'accoutumassent à les manœuvrer.

A l'égard des officiers de notre marine pour les commander, cela n'est pas possible d'abord aucun de ces officiers ne voudroit servir sous un commandant étranger et ensuite ils perdroient leur état s'ils prenoient du service chez l'étranger, mais pour conduire sûrement ces frigates, nous choisirons parmi nos propres capitaines des hommes habiles et en état de remplir l'objet, et que l'on pourroit peut-être décider à rester au service de la Grèce, et vous les trouverez utiles. Sous tous les rapports, il est entendu que nous ne choisirions que des hommes de talent, et sur lesquels on pourroit compter.

Vous pouvez bien penser d'après tout ce que l'on a dit de la supériorité de nos officiers de marine, qu'à moins qu'on leur offrit une carrière honorable et des avantages, ils ne se decideroient à laisser le service de leur pays, et perdre leur avancement ; mais s'ils étoient continus en commandement, et qu'il leur fut offert une chance d'avancement, telle est leur zèle pour la cause de votre pays, qu'ils pourroient se devouer à partager votre sort ; et ils pourroient se faire accompagner par un nombre de matelots et canoniers accoutumés à un service de cette espace. Les lauriers gagnés contre les Anglois, ne seroient certainement pas perdus en combattant contre les Turcs.

Il est bon d'observer que nos compagnies d'assurance sont établies avec des capitaux considérables et assurent contre tous risques. Prenants, avec tous les habitans de ce pays un vif intérêt pour les succès de votre galante et opprimée nation, nous ne pouvons que regretter le delay pour obtenir des batimens si nécessaires et importants pour la défense de vos isles. Avec des marins aussi braves et habiles que les Grècs et bien conduites, nos frégates de première classe seroient en état de détruire les plus forts batimens Turcs, et il nous semble qu'en résultat ce système de défense doit présenter un rempart insurmountable contre vos ennemis.

La construction de ces batimens sera surveillée avec le plus grand soin. et notre attention réunie sera journellement employée à hâter et inspectionner les travaux. Nous nous trouvons honorés et flattés du choix que vous avez fait de notre intervention, nous ne négligerons rien pour obtenir des batimens qui fassent honneur à notre pays et au service pour lequel ils sont destinés. Nous ré-

iorant à ce que le General Lallemand vous écrit nous avons l'honneur de vous renouveler l'expression de notre parfaite considération, et de notre entier dévouement.

Nous sommes, Messieurs,

Vos tres humbles et obeisst. Serviteurs,

LE ROY, BAYARD, & CO.

Messrs. JEAN ORLANDO and

G. G. & S. HOWLAND.

ANDRE LURIOTTIS,

Londrès,

29 Sackville St. Piccadilly.

TRANSLATION.

New-York, 15th April, 1825.

GENTLEMEN,

THE arrival of General Lallemand has placed us in possession of the letter of the 5th of March, which you have done us the honor to address to us ; enclosing two letters of credit from Mr. S. Williams of £25,000 each, which we shall use separately, though in every other respect we shall act together for the greatest advantage of the Greek nation. Immediately upon the receipt of your letter, we addressed ourselves to one of the board of navy commissioners, (a l'un des commissaires de marine.) This department is composed of four of our most esteemed officers of the highest grade, and having much influence, they direct every thing which relates to the marine. We addressed ourselves to one of them in confidence, and have been informed, as we feared, that the government would not sell any of its ships, and would not lend any of its ship-timber, unless authorised by an act of Congress, which would require 8 or 9 months of delay, Congress not being actually in session. A similar request has been made by the governments of Colombia and Mexico, and although their independence is acknowledged by this country, their ministers have been informed, that their demand would be refused, and their project has been abandoned. The position of Greece is different. Our government will refuse to do any act which might lead to difficulties ; *and although there is no law which forbids the building of ships*, (qui empêche la construction de ba-

timens) nevertheless to avoid all complaint from the governments of Europe, it is proper to avoid a useless publicity, and we will give it to be understood that we are building for the government of Peru, In sending the ships to sea the armament will be put on board as cargo. THERE WILL BE NO DIFFICULTY ; and the ships may be insured at a very low premium, which we believe will not exceed 2 or 3 per cent. for one and perhaps two ports. Unfortunately for your country. the order has been too long delayed to render it possible that the ships should be employed this campaign. The great number of vessels of war building for Colombia, Peru, Mexico, and Brazil ; and 15 frigates for the government of the United States, occasion such an activity in our ship-yards, (occasionnent une telle activité dans nos ateliers) that your ships cannot be built and ready for sea in less than six months. In the same space of time, the eight frigates might be built and be ready for the next campaign, and by the time that the crews would have become accustomed to manœuvre them. In respect to our naval officers to command the ships, that is impossible. No one of these officers would serve under a foreign commander ; and they would lose their rank if they entered a foreign service. But for the safe conduct of these frigates, we will choose among our own officers, (capitaines) proper men to insure the object, and who might be persuaded to remain in the service of Greece, and you will find them useful in all respects. It is to be understood, that we shall choose only men of abilities, and upon whom reliance may be placed.

You may well suppose after all that has been said of the superiority of our naval officers, that unless they were offered an honourable and advantageous service, they would not decide to leave the service of their country and lose their grade ; but if they were continued in command, and a chance of promotion were offered them, such is their zeal for the cause of your country, that they would devote themselves to partake your fortune : and they might take out a number of sailors and gunners accustomed to the service. The laurels gained from the English would certainly not be lost in fighting the Turks.

It is proper to observe, that our insurance companies are established with considerable capitals, and insure against all risk. Taking, with all the inhabitants of this country, a lively zeal for the success of your gallant and oppressed nation, we cannot but regret the delay in obtaining ships so important and necessary in the defence of your islands. With sailors as brave and skilful as the

Greeks, and well officered, our frigates of the first class would be able to destroy the strongest Turkish ships: and it appears to us, that in effect, this system of defence must present an insurmountable rampart against your enemies. The building of these ships will be attended to with the greatest care, and our united attention will be daily employed in inspecting and hastening the work. We feel honoured with the choice which you have made of us. We shall neglect nothing to procure ships which may do honour to our country and to the service for which they are destined.

Referring ourselves to what General Lallemant writes to you, we have the honour to renew the expression of our perfect consideration, and of our entire devotion.

We are, Gentlemen,

Your very humble and obedient Servants,

LE ROY, BAYARD, & CO.

G. G. & S. HOWLAND.

MESSRS. JEAN ORLANDO and

ANDRÉ LURIOTTIS.

No. IV.

New-York, Dec. 7, 1824.

MESSIEURS,

Nous avons reçu la lettre que vous nous avez fait l'honneur de nous adresser pour nous demander des renseignemens sur le cont d'une frégate egale à celles de notre gouvernement, d'un autre bâtiment à un canon, ainsi que de différentes munitions de guerre.

En reponse nous avons l'honneur de vous remettre inclus une nette détaillée qui satisfait à vos différentes questions à laquelle nous prenons la liberté de vous renvoyer. L'achat de ces différents objets peut-être fait ici en tout temps, excepte les batimens qu'il faut faire construire avec un ordre en mains. Nous nous occuperions immédiatement de cette construction, nous sommes dans l'usage de faire un contrat avec un constructeur, et en autre de l'inspection d'un autre constructeur qui nous est dévoué et qui veille au travail et à la qualité des matériaux que l'on employe, nos frequentes visites a l'atelier nous assurent des batimens bien construits et de bonne durée ; nos constructeurs sont fameux pour des batimens d'un marche superieure.

L'argent a trop de valeur dans ce pays pour que l'on l'employe emprunts étrangers. Malgre l'interet que les habitants prennent aux succes des braves Grècs combattant pour leur independence, nous ne pouvons vous donner l'espoir de reussir pour celui qui vous paroisser desirer ; et nous craindrions qu'une tentative infructueuse fit du tort au credit de votre gouvernement en Europe. D'un autre coté le payement des achats que vous pourriez ordonner ici fait au moyen de remboursemens sur Londres, vous offrirait l'avantage de la prime de 8 a 10 per cent. que les traittes sur l'Angleterre gagment ordinairement. Des credits de maisons de Londres connues ici telles que Messrs. Baring, Brothers, et Co. ou Mons. N. M. Rothschild vous assureroient toujours la jouissance de cette et prime et l'avantage de ne faire des debourses ici, qu'aux epoques où ils seroient necessaires sans vous mettre dans l'obligation de faire passer des fonds a l'avance dans ce pays. Si vous nous honorez de vos ordres, les intêrets de votre gouvernement seront soignés avec le zèle que nous por-

tons a ceux de nos amis, augmenté s'il est possible par les sentimens qui nous unissent a la cause de votre pays, et dont nous aurés été informés en voyant notre Sieur Bayard, president du comité chargé d'adresser des ecours en Grèce. Munis de credits a Londres de la nature de ceux mentionnes plus haut nous pourrons remplir vos intentions en tous points. Veuillez, Messieurs, agreer l'assurance de notre parfaite consideration, et d'l'entier devouement avec lequel nous avons l'honneur d'etre.

Vos tres obeis. Serviteurs,

LE ROY, BAYARD, & CO.

TRANSLATION.

New-York, Dec. 7th, 1824.

GENTLEMEN,

WE have received the letter which you did us the honour to address to us to obtain information of the cost of a frigate equal to those of our government ; of another vessel with a single gun, and likewise that of different munitions of war.

In reply, we have the honour to remit to you enclosed a detailed estimate which fully meets your different questions, and to which we take the liberty of referring you. The purchase of these different objects may be made at any time, excepting the vessels, which must be built with an order in hand. We could immediately commence the building of them : we are in the habit of making a contract with a builder, and beside the inspection of another builder who is in our employ, and who watches over the work, and the quality of the materials which are made use of, our frequent visits to the ship-yard assure us of well built and durable vessels : our builders are celebrated for ships of a superior quality.

Money is of too much value in this country to be employed in foreign loans. Notwithstanding the interest that the inhabitants

take in the success of the brave Greeks fighting for their independence, we cannot give you the hope of succeeding in what you appear to desire; and we should fear that a fruitless attempt might do injury to the credit of your government in Europe. On the other side, the payment of the purchases which you might order here by means of drafts on London, would offer you the advantage of a premium of 8 or 10 per cent which bills on England generally bear. Credits on houses in London, known here, such as Messrs. Baring, Brothers, & Co. or Mr. N. M. Rothschild, would assure to you always the enjoyment of that premium, and the advantage of not making any disbursements here, but at those times when they would be necessary, without obliging you to send funds in advance to this country.

If you honour us with your orders, the interests of your government will be watched over with the zeal which we have for the interests of our friends, augmented, if it be possible, by the sentiments which unite us to the cause of your country, and of which you have been informed, by seeing our Senior Bayard, president of the committee entrusted with sending assistance into Greece. Furnished with credits on London of the nature of those mentioned above, we shall be able to fulfil your intentions in every point. Do us the favour, gentlemen, of accepting the assurance of our perfect consideration, and of the entire devotion with which we have the honour to be

Your most obedient Servants,

LE ROY, BAYARD. & CO.

Copy of Estimate referred to in the foregoing letter.

Estimate of a Ship of 50 Guns, 1500 Tons.

Frame, 20,000 feet live oak, at \$1,50 per foot.	\$30,000
Other wooden materials	30,000
Labour	60,000
Smith's work	20,000
Copper bolts	8,000
Sheathing copper and nails	12,000

Joiner's bill	7,000
Carver's ditto	1,200
Painter's ditto	3,000
Blockmaker's ditto.	1,000
Plumber's ditto	1,600
Turner's ditto	700
Ship-chandler's ditto, including pitch, oakum	4,000
Rigger's bill	1,500
1,500 tons at \$120 per ton	42,000

Hulls and spars complete.

Rigging one suit of sails, anchors and cables	\$30,000
Guns and carriages	28,000
Contingent expenses.	67,500
1500 tons at \$165 per ton	247,500

• *Estimate for live oak, frame, hull, and spars.*

1 50 gun frigate, 1500 tons, at	\$120 per ton.
1 44 1400	120
1 36 1100	120
1 28 sloop of war, 700	90
1 20 500	80
1 16 300	70
Gun boats, 100 tons, about \$10,000, fit for sea.	

No. V.

Estimate of the value of the ship of war, the Liberator.

Wood of every description for the hull, with a live oak frame, would cost	\$65,000
In this frame there are about 24,000 cubical feet.	
Live oak costs $142\frac{1}{2}$ cents, and white oak is estimated at 60 cents, difference $82\frac{1}{2}$ cents. Cubical feet, \$19,800 deducted from the \$65,000	
leaves	45,200
Iron	9,795
Copper and composition	27,140
Standing and running rigging, cables, hawsers, and messengers, per inventory	12,698
Chain cables, 75 and 45 fathoms, $1\frac{5}{8}$, $1\frac{3}{4}$	1,822 80
Boats, with oars complete	1,885
Water casks, 33,300 gallons	3,330
Blocks	5,000
Sails	17,000
Anchors	4,474
Labor of every description	55,000
Kentlege, 100 tons	4,000
Galley	2,000
Armament 34—32lb. cannon	13,566
3,000 32lb. shot and 900 32lb. grape	7,004
30 42lb. carronades	5,550
1275 42lb. shot and 500 42lb. grape	1,680
Gun carriages and all the apparatus belonging to the armament, including the stores in the gunner's department. The magazine furniture, the forge, bellows, and all the articles belonging to the blacksmith's department, per inventory	13,426 17
\$230,570 97	

No. VI.

Taken from the Report of the Secretary of the Navy for 1825.

*Exhibit of Expenditures for Labour and Materials of every description in the Ships built and building under the
Law for gradual Increase.*

Description of Vessels.	No. of Days' Work.	Amount of Wages.	Materials.			Total Cost of Materials.	Expenditures for Materials and Labour.	Remarks.
			Wood.	Metal.	All other Materials.			
		<i>Dolls. cts.</i>	<i>Dolls. cts.</i>	<i>Dolls. cts.</i>	<i>Dolls. cts.</i>	<i>Dolls. cts.</i>	<i>Dolls. cts.</i>	
Frigate launched. Brandywine.	69,309½	84,990 02	59,541 51	61,244 02¾	56,100 70½	176,886 24¼	261,876 26¼	*

* Under "all other materials" for this ship, is included ordnance and stores, and embraces all the expenditures for equipment and outfits, as far as have been ascertained

No. VII.

COMMODORE ISAAC CHAUNCEY,

SIR,

WE are about publishing a statement of the evidence in the late cause respecting the Greek frigates. The enclosed report of your testimony is extracted almost verbatim from the notes taken at the time by one of us, (the other not being then present,) with the exception of the answer to the question at the close of the report. But the counsel who was present is confident that that question and answer are correctly stated.

We are desirous of avoiding all error as far as possible, and, therefore, in every case, where it seemed to us necessary, we have applied, or shall apply, to the gentlemen who gave their testimony for the purpose of correcting, as far as may be possible, any errors into which we may have fallen.

If there are any errors in the foregoing report, in your judgment, you will oblige us, by pointing them out to us.

We are, Sir, with the highest consideration,

Your obedient servants,

J. DUER.

R. SEDGWICK.

New-York, Nov. 22nd, 1826.

Report of Commodore Chauncey's Testimony, enclosed in letter to him.

COMMODORE CHAUNCEY.

THE witness has been on board the vessels but once. Not within his knowledge that any ships except on the Lakes, have been built in less time. It must have required great exertions to build them within the time in which they were built. During the summer of 1825, eighteen shillings were the wages of carpenters, such as are usually to be had for twelve and thirteen. Materials rose during this period in proportion to wages of mechanics. The necessity of procuring materials at all events, would naturally raise their price. Should think that the work required great exertions both in the merchants and mechanics. The frigates appear to be well built.

Cross-examined. He was instructed by the government to act as one of the commissioners to appraise or value the ships. The report of the commissioners was made for the purpose of enabling the government to value the vessels if one or the other should be purchased. The preference was given to the upper ship, (the Liberator,) but he believes that there was not any very material difference between them. He thinks them equal to the Brandywine in every respect, except live oak. He should think, \$25,000 or \$30,000, the usual difference between live oak and white oak in the expense of building such frigates. An estimate of the cost of the Brandywine being shown to the witness, he says that, the masts, spars, and rigging therein, appear to be estimated low, though he has nothing at present to refer to, to show this. Masts, spars, and anchors, were taken from other vessels to supply the Brandywine.

During the year 1825, the following vessels were building for the United States. Two frigates at New-York, one at Portsmouth, one at Boston, one at Washington, one at Norfolk. One sloop of war, at Boston, two at New-York. One 100-gun ship at Philadelphia, one at Boston, and one at Portsmouth.

He has always been under the impression, that the dispatch in building those frigates would make the expense from 25 to 30 per cent. more: this is a general impression. He does not think they could have been built in as short a time, or for as little money elsewhere.

If the same dispatch had been used after launching as before, the vessels might have sailed in February or March.

Thinks that no better ships have been built in private yards.

When the materials taken for the Brandywine, from other ships are replaced, they will be charged to the Brandywine, according to the usage in the navy. Being asked by the counsel of the deputies whether he knew that the materials taken from other ships had not been replaced before the said estimate was made out, and consequently included in it, he answered that he did not.

COMMODORE CHAUNCEY'S REPLY.

UNITED STATES NAVY YARD,

Brooklyn, Nov. 26, 1826.

GENTLEMEN,

I HAVE had the honor of receiving your communication of the 22nd instant, and I regret that my official duties have prevented me from furnishing you with an earlier reply. In examining your report of my testimony given before the arbitrators in the case of the Greek frigates, there appears in some parts of it considerable variation from what I believe I said. For instance, you make me state, that there were building at the navy yards, at Philadelphia, Boston, and Portsmouth, three 100-gun ships, when it is notorious, that we have but one of that class. Now, it cannot be believed that I could make such statement either from ignorance, or wilfully. Besides, the variation between that part of your report above alluded to, and what I believe I said, it strikes me, that there is much of the first part of my testimony entirely omitted. This perhaps is not material ; I shall, therefore, proceed to state the substance of the testimony that I recollect to have given before the arbitrators, although it may not be in the order in which it was given : for you doubtless recollect that my testimony was merely answers to interrogatories. When asked whether I had visited the Greek frigates, I stated that I had visited them but once, and then as one of the commissioners, appointed by the secretary of the navy, to examine and report upon them. I stated, that the commissioners preferred the *Liberator*, but that I believed there was little or no difference between the ships, and both of them appeared well-built, and equal in all respects to our largest class frigates, except the frames, which were in the Greek ships of white oak. I also stated, that I had never known ships of their dimensions built in so short a time, except on the Lakes ; that it must have required great exertions both in the merchants and mechanics to have accomplished the work in so short a period.

I also stated, that during the summer of 1825 the wages of carpenters employed in the navy yard under my command, rose from 12*s.* and 14*s.* to 17*s.* and 18*s.* per day, and that I presumed they had increased in the same, or a greater proportion in private yards, and that the price of materials were proportionably increased, in consequence of the number of ships building, and the great demand for materials.

I stated, that the Greek ships appeared to me to be larger than the Brandywine ; that the difference between the cost of a live oak and a white oak frame would probably be from \$25,000 to 30,000. But this was only conjecture, as I had no documents to refer to ; and it was probable I might be greatly in error.

When the cost of the Brandywine was shown to me, I stated, that it appeared to me to be low, and I attempted to account for it by stating, that the Brandywine was fitted out for a particular service, and in great haste, and that I knew that many of her equipments were taken from other ships, such as masts, spars, sails, rigging, guns, &c. &c. and I presumed that they were not all charged to the Brandywine, nor would they be until the same articles were procured to replace them to the ships from which they were taken ; at least, this was the usual course of service.

I believe that I stated, in answer to a question, that I did not know that all the articles taken from other ships for the Brandywine, were not already charged to that ship, and included in the estimate of her cost ; but I did not believe that they were, as it would be unusual.

In answer to a question, I stated, that during the year 1825, there were building at the Navy Yard, Portsmouth, N. H. one frigate ; at Boston, one ship of the line (74-guns,) one frigate, and one sloop of war ; at New-York, two frigates and two sloops of war ; at Philadelphia, one ship of the line, (100 guns ;) at Washington, one frigate ; at Norfolk, one ship of the line, (74) and one frigate, besides these, there were on the stocks at our different yards, finished, or nearly so, two ships of 74 guns, and two frigates, besides several under repairs. It was my impression, that ships built under the circumstances of the Greek frigates, would cost from 25 to 30 per cent. more than similar ships built under ordinary circumstances ; and from my knowledge of the United States, I did not believe that ships of the same dimensions could have been built in so short a time,

and for the same money at any other port. It was also my impression, that without impediment of any kind, and the same exertion used in fitting the ships after launching, as was used in the building, they might have sailed in February or March, 1826.

I have thus stated in substance, what I recollect to have said, in giving my testimony before the arbitrators, in the case of the Greek frigates.

I have the honor to be,

Very respectfully, Gentlemen,

Your most obedient humble Servant,

I. CHAUNCEY.

To Messrs. JOHN DUER and

ROBERT SEDGWICK, Esqs.

No. VIII.

*An Estimate of the Expenses for completing ready for Sea,
one Frigate, including Pay and Subsistence for Officers
and Men.*

	<i>Dolls.</i>
Smith and Demon, carpenter's work, including amount due to George Arrowsmith	3,650
Bergh and Ivers, composition and brass castings	1,900
D. and L. Halsey, joiner's work, including settee and tables for cabin, and table for ward-room	700
Elliott Higgins, rigger's work	1,000
N. Waterbury, masts and spars	1,150
George Youle, plumber's work	250
Charles Ware, sail-maker	750
Fitment for boats and oars for boats	175
Sellock Nichols, block-maker, with extra blocks, sheeves, and pins, for boatswain and gunner	2,500
Tucker and Barker, forges, bellows, anvils, &c.	600
Enoch Hidden, for sundry armourer's work, fitting guns, &c.	317
J. Pier, for copper work, hand pumps. &c.	75
Iron to complete the outfit	500
Salt	90
Wharfage and harbour expenses, transportation of ves- sels by steam-boats, pilotage, and all other harbour expenses	900
Watering ship, wood, coal, sawing, and cartage	700
Candles and lamp oil	372
Harbour expenses, for boating, &c.	100
Finishing coppering magazine and passages	250
Fitments for hot shot	50
Powder, (cannon) 24,000lb.	4,800
Powder, (musket) and priming, 3,000lb.	600
Powder horns and lead, aprons for locks	290
Crow bars, salt boxes, tube boxes, and screens for magazine	266

200 muskets	800
200 cutlasses	500
Battle axes and boarding pikes	625
Fire engine and hose	800
Hand cuffs and shackles for prisoners	320
Small articles from the cooper, such as buoys, harness casks, buckets, &c.	150
Medical department, medicine, hospital stores, and sur- gical instruments	1,200
Sundry disbursements, pay to officers and men attached to vessels, store rent, gunner and gunner's crew, and all contingent expenses occurring to the store and vessels	3,750
Hammock bag, wind sails, boat, and studding sail covers	950
One cable, required for ship, No. 1	1,650
N. Waterbury, for making and other expenses of ex- tra spars	400
Ship chandlery, extra rigging for stores, supplying de- ficiencies occasioned by weather or war for six months, sailing master's stores, boatswain's stores, gunner's stores, sail-maker's stores, purser's outfits, and purser's steward's outfits	13,900
Provision for 200 men for four months	6,250
Pay of 130 men, at \$20 per month, for six months	15,600
Pay of 25 petty officers, at \$25 per month, for six months	3,750
Pay to the commander and 23 officers for six months	8,740
Cabin furniture	50
Contingencies	4,500
	\$86,370

New-York, April 20th, 1826.

No. IX.

Expenses of Superintending the building of two Frigates for Greece. Keels laid in July, 1825—launched in Nov. same year, and no work done on them after March, 1826.

To two mercantile houses in N. York—commissions (including banking commissions in London never paid and forgotten to be charged, and interest on whole 6 months before due)—for visiting ship-yards frequently—meeting in committee with General Lallemand and Capt. Chauncey, three times a week—having the trouble of several hundred thousand dollars in hand for several months, and incurring the risk of the arbitrators not allowing all their claims, ... \$90,000

To a distinguished French General, for ascertaining that frigates should be of first class—do. materials of the best quality—do. that rules and regulations of U. States navy should be observed—also meeting in committee as aforesaid—at the rate of £120 sterling per month, &c.—say, ... 6,000

To a Captain in the American navy—for also ascertaining that materials should be of best quality—also that the rules and regulations of navy should be observed—also meeting in said committee—furnishing plans and models—keeping an office—receiving proposals for contracts—and losing his fees and emoluments as a Captain in the navy—\$10,000 per contract, and \$1,500 per receipt, to supply want of other vouchers for same amount, . . . 11,500

To the master ship-builders for their skill and personal services—also, exclusive devotion of their extensive ship-yards, including work-shops, black-smiths' shops, mould lofts and tools—also, first inspection of wood, timber, &c. afterwards examined by Gen. L. and Capt. C.—meeting in committee not charged . . 50,000

\$157,500
122,000

Annual Expenses of Administering the Governments of the United States and State of New-York, in their executive and judicial departments.

President and Vice-President of the U. States, per annum, . . . \$30,000

The heads of the four departments, ... 24,000

Chief Justice and six Judges of the Supreme Court of the United States, ... 31,000

Governor and Lieutenant Governor of the State of New-York, (about) 8,000

Secretary of State, Comptroller, Treasurer, Surveyor General, and Attorney General, ... 10,000

Chancellor, Chief Justice, and two Justices of the Supreme Court, ... 8,000

6,000 Eight Circuit Judges, including the City of New-York, . . 11,000

\$122,000



TO
THE MERCHANTS OF THE CITY OF NEW-YORK,

This Pamphlet,

WRITTEN WITH A PRIMARY VIEW OF ENABLING THEM,
IN SUCH MODE AS THEIR JUDGMENT AND FEELINGS MAY DICTATE,

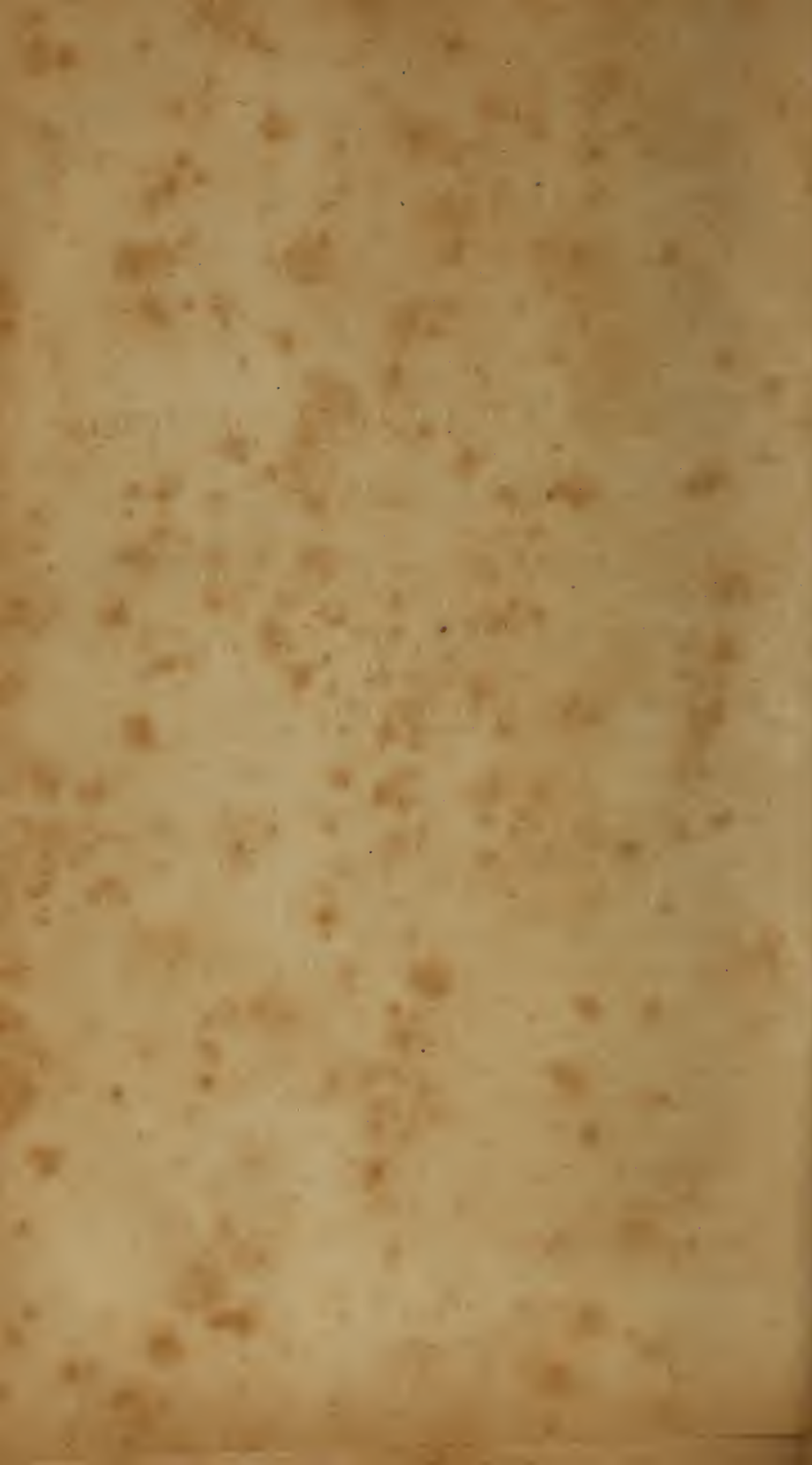
TO VINDICATE THEIR OWN HONOUR

AND THAT OF THEIR COUNTRY,

IS RESPECTFULLY INSCRIBED,

BY

THE AUTHORS.







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